



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 14-03365

**Appearances**

For Government: Alison O'Connell, Esquire, Department Counsel

For Applicant: *Pro se*

07/21/2016

**Decision**

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding financial considerations. Eligibility for a security clearance and access to classified information is denied.

**Statement of the Case**

On June 19, 2007, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application.<sup>1</sup> He submitted another e-QIP on January 30, 2013.<sup>2</sup> On December 12, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified

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<sup>1</sup> Item 16 (e-QIP, dated June 19, 2007).

<sup>2</sup> Item 5 (e-QIP, dated January 30, 2013).

(Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006.

The SOR alleged security concerns under Guideline F (Financial Considerations), and detailed reasons why the DOD CAF was unable to make an affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant received the SOR on January 6, 2015. On January 29, 2015, Applicant responded to the SOR allegations and elected to have his case decided on the written record in lieu of a hearing.<sup>3</sup> A complete copy of the Government's file of relevant material (FORM) was mailed to Applicant on June 1, 2015, and he was afforded an opportunity, within a period of 30 days after receipt of the FORM, to file objections and submit material in refutation, extenuation, or mitigation. In addition to the FORM, Applicant was furnished a copy of the Directive as well as the Guidelines applicable to his case. Applicant received the FORM on December 29, 2015. Applicant timely submitted documentation in response to the FORM on two occasions. Department Counsel did not object to the documents which were marked as Applicant items (AI) A through E. The case was assigned to me on February 17, 2016.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted with brief comments all of the factual allegations pertaining to financial considerations (§§ 1.a. through 1.j.). Applicant's admissions and comments 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 45-year-old employee of a defense contractor. He has been a superintendent with his current employer since July 2009. He was previously in a variety of different positions (senior project manager, construction manager, security specialist, design engineer, senior installation technician, and alarm technician) with other employers since May 2000.<sup>4</sup> Applicant was terminated from his job in November 2005 because he expressed a dislike for it, and he remained unemployed, supported by unemployment compensation and credit cards until January 2006.<sup>5</sup> He is a 1989 high school graduate.<sup>6</sup> Applicant enlisted in the U.S. Navy (active reserve) in August 1990 and was honorably discharged in July 1996.<sup>7</sup> He was granted a top secret (TS) security

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<sup>3</sup> Item 4 (Applicant's Answer to the SOR, dated January 29, 2015).

<sup>4</sup> Item 5, *supra* note 2, at 10-18.

<sup>5</sup> Item 22 (Personal Subject Interview, dated March 26, 2013), at 3; Item 5, *supra* note 2, at 15.

<sup>6</sup> Item 22, *supra* note 5, at 2.

clearance in 1990, and he retained it until December 2011 when his application for a TS security clearance with access to Sensitive Compartmented Information (SCI) was denied for reasons explained below.<sup>8</sup> Applicant was married the first time in May 1992 and divorced in June 1994.<sup>9</sup> He married again in July 2009 and separated in August 2012.<sup>10</sup> He has two sons born in 1992 and 2005, as well as a daughter born in 2001.<sup>11</sup>

## **Financial Considerations<sup>12</sup>**

It is unclear when Applicant first experienced financial difficulties, but in reviewing his comments to investigators from the Defense Security Service (DSS)<sup>13</sup> as well as the Office of Personnel Management (OPM),<sup>14</sup> it appears that Applicant had significant financial problems as far back as the 1990's associated with his first marriage. In 1994, his wages were garnished for child support. In October 2000, after his fiancée informed him that she was pregnant, Applicant obtained a credit report to gather his debt information to create a budget. He realized for the first time the depth of his financial problems. He had estimated that he had \$10,000 in debt, but soon realized that his debts were actually approximately \$23,000.

With an annual salary of \$38,000, Applicant sought guidance from credit counselors and an attorney. He was faced with three options: (1) obtain a consolidation loan, or as he stated it, go into debt to get out of debt; (2) make monthly payments of \$300 to \$350 to his creditors, something he was unable to afford; and (3) file for bankruptcy. Applicant chose the latter of the three choices, and in March 2001, he filed a voluntary petition for bankruptcy under Chapter 7 of the U.S. Bankruptcy Code, contrary to his statement that he had filed under Chapter 13. A May 2001 credit report revealed seven past-due accounts worth \$11,440; two liens or judgments worth \$7,780; and eight collection or charged-off

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<sup>7</sup> Item 5, *supra* note 2, at 19; Item 22, *supra* note 5, at 3.

<sup>8</sup> Item 22, *supra* note 5, at 4; Item 5, *supra* note 1, at 50-51; Item 14 (Letter of Denial (LOD), dated December 14, 2011).

<sup>9</sup> Item 16, *supra* note 1, at 20-21.

<sup>10</sup> Item 5, *supra* note 2, at 22-23.

<sup>11</sup> Item 5, *supra* note 1, at 25-26.

<sup>12</sup> General source information pertaining to the financial issues discussed below can be found in the following exhibits: Item 20 (Equifax Credit Report, dated May 5, 2001); Item 17 (Combined Experian, TransUnion, and Equifax Credit Report, dated June 27, 2007); Item 10 (Combined Experian, TransUnion, and Equifax Credit Report, dated February 21, 2013); Item 9 (Equifax Credit Report, dated April 3, 2014); Item 8 (Equifax Credit Report, dated May 4, 2015); Item 18 (Personal Subject Interview, dated August 6, 2007); Item 19 (Statement of Subject, dated June 27, 2001); Item 22, *supra* note 5; Item 4, *supra* note 3; Item 15 (Letter, dated October 4, 2001); Item 21 (Extract of Bankruptcy Court Records, dated May 4, 2015); Item 14 (Letter of Intent to Deny Eligibility for Access to SCI with enclosed SOR, dated August 10, 2011). More recent information can be found in the exhibits furnished and individually identified.

<sup>13</sup> Item 19, *supra* note 12.

<sup>14</sup> Item 18, *supra* note 12.

accounts worth \$17,064.<sup>15</sup> By June 2001, Applicant's annual salary had increased to \$54,500.<sup>16</sup> Applicant's unsecured, nonpriority debts were discharged in July 2001.<sup>17</sup>

Although Applicant's financial difficulties were resolved by his 2001 bankruptcy discharge, by 2004, he reverted to his past financial practices, and accounts started to become past due. Credit card accounts were frozen or closed for being past due; a mortgage became delinquent; child support again fell into arrears; and a jewelry store account was charged off.<sup>18</sup> By August 2007, Applicant's finances fell further into disarray. Applicant attributed his new financial problems to: (1) purported nonspecific medical problems that caused him a loss in pay; (2) reliance on credit cards "to meet the demands of life," upon being released from work; and (3) an inability to find employment.<sup>19</sup> Judgments were obtained against him in April 2008 (\$2,801.67)<sup>20</sup> and April 2010 (\$744.48),<sup>21</sup> and another judgment for \$1,442.33 was converted to a state tax lien in July 2010.<sup>22</sup>

In August 2011, the Department of the Navy (DON) CAF took the initial steps to deny Applicant eligibility for access to SCI, based on financial considerations. The DON CAF SOR identified nine delinquent accounts worth \$150,258.<sup>23</sup> Applicant replied to that SOR and attributed his financial problems to: (1) mismanagement of his funds; (2) his failure to fully understand the true status of his finances and how to properly work with it; and (3) irresponsibility.<sup>24</sup> He contended that he had again spoken with a financial counselor and was taught how to manage his money and debt, and that the knowledge he had gained will assist him in avoiding the same financial predicament. He indicated he would meet with his financial counselor to discuss his options. Applicant intended to contact his creditors and start working to resolve the largest debts first. He claimed to have a budget that would give him approximately \$500 per month to pay creditors. He intended to develop payment plans with each of his creditors, and he explained it would be a long-term process to resolve his debts.<sup>25</sup> The information submitted to the DON CAF was not sufficient to generate a change of the earlier decision. Accordingly, on December 14, 2011, the DON CAF issued Applicant a letter of denial (LOD). The basis for the decision was essentially as follows.<sup>26</sup>

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<sup>15</sup> Item 20, *supra* note 12.

<sup>16</sup> Item 19, *supra* note 12, at 2.

<sup>17</sup> Item 19, *supra* note 12, at 1-2; Item 18, *supra* note 12, at 1-2; Item 21, *supra* note 12, at 1.

<sup>18</sup> Item 17, *supra* note 12.

<sup>19</sup> Item 18, *supra* note 12, at 2.

<sup>20</sup> Item 7 (Civil Case Details, dated May 4, 2015).

<sup>21</sup> Item 6 (Case Information, dated May 4, 2015). A lien was recorded, and in August 2010, a writ of garnishment was issued.

<sup>22</sup> Item 12 (Case Information, dated May 4, 2015).

<sup>23</sup> Item 14 (SOR), *supra* note 12, at 2-3.

<sup>24</sup> Item 15, *supra* note 12, at 1.

<sup>25</sup> Item 15, *supra* note 12, at 1-2.

<sup>26</sup> Item 14 (LOD), *supra* note 8, at 1.

. . . you did not submit any documentation which reflects you have resolved, reduced or addressed each delinquent account listed in [the SOR]. Your actions indicate an inability or unwillingness to resolve your debts, which contributes to a whole person assessment of questionable judgment, untrustworthiness, and an unwillingness to comply with rules and regulations.

In January 2013, when Applicant completed his e-QIP, he acknowledged having financial difficulties and identified several delinquent accounts as well as a number of unpaid parking tickets which were issued as early as 2007 and 2008. He noted that he had met with several unidentified financial specialists to discuss his credit issues, and he stated:<sup>27</sup>

I have learned how to properly manage my money. I have developed a budget and stuck to it for the better part of a year. I have sat down and created a plan to repay all my debt over the course of the next 4 or 5 years. I contacted my mortgage company and I am in the process of setting up a short sale to sell my home and be relieved of this debt.

Applicant was interviewed again by an investigator from OPM in March 2013. During that interview, Applicant attributed his financial problems to: (1) his August 2012 separation from his wife; (2) giving his wife sixty percent of his salary; (3) the downturn in the housing market; and (4) his financial mismanagement.<sup>28</sup> He contended that he had paid a number of creditors various amounts of money over the period of a few years, but failed to submit any documentation to support his contentions. His purported attempts to set up repayment plans with some creditors were supposedly rejected. He also offered no documentation to support the existence of those efforts.

One common theme throughout Applicant's 2007 OPM interview, 2011 personal appearance, 2013 e-QIP, 2013 OPM interview, and his 2015 Answer to the SOR, was his stated intentions to pay the debts in full, and his contentions that he had actually made payments to various creditors. His professed main goals were: (1) maintain his current budget; (2) maintain a positive and strong payment status with his current debt; (3) not incur any new debt; (4) utilize additional money when possible to reduce old debt; (5) utilize travel money with his new position to reduce old debt; and (6) if he receives a raise, to maintain his current budget and use the extra money to pay off debt. He did none of the above.

Applicant stated that he had spent much of 2015:<sup>29</sup>

trying to get bills organized and paid off. [He] worked closely with a couple of the debtors and was slowly paying them off. Towards the end of the summer [he] talked with a couple of different credit counselors and they all told [him] basically the same thing. The high amount of debt versus the limited funds [he has] to pay it off, [his] smartest move was to apply for bankruptcy.

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<sup>27</sup> Item 5, *supra* note 2, at 53.

<sup>28</sup> Item 22, *supra* note 5, at 4-5.

<sup>29</sup> AI A (Response to the FORM, dated December 29, 2015).

Instead of paying his debts, in November 2015, Applicant filed a voluntary petition for bankruptcy under Chapter 7 of the U.S. Bankruptcy Code, claiming up to \$50,000 in estimated liabilities.<sup>30</sup> Applicant's unsecured, nonpriority debts were discharged in January 2016.<sup>31</sup>

In his January 2015 Answer to the SOR, Applicant stated that his monthly net income was \$2,880, and his monthly expenses were \$2,870, leaving only \$10 for discretionary saving, investing, or spending.<sup>32</sup> In his November 2015 voluntary petition, he contended his monthly net income was \$3,012.71, and his monthly expenses were \$2,940, leaving only \$72.71 for discretionary saving, investing, or spending.<sup>33</sup> Among his claimed monthly expenses were \$60 for boat insurance, and \$380 for a boat slip fee.<sup>34</sup> He also noted that his 2015 gross income through mid-November 2015 was \$79,805.72; his 2014 gross income was \$106,919; and his 2013 gross income was \$106,038.<sup>35</sup>

In preparation for his bankruptcy filing, in September and October 2015, Applicant received internet and telephone counseling on debt education and personal financial management.<sup>36</sup> Despite his repeated references to other financial counselors, Applicant failed to submit documentation to support any contention that financial guidance was received from any such entity.

The SOR identified ten purportedly continuing delinquent accounts, totaling approximately \$55,587. Those debts were as follows: a judgment for \$2,861.67 issued in 2008 (SOR ¶ 1.a.);<sup>37</sup> a default judgment for \$744.48 issued in 2010 (SOR ¶ 1.b.);<sup>38</sup> an internet account for \$623 (SOR ¶ 1.c.); a utility account for \$246 (SOR ¶ 1.d.); a charge account for \$3,600 (SOR ¶ 1.e.); a Veterans Administration real estate mortgage with a balance of \$143,745 that was past due \$43,983 and foreclosed upon (SOR ¶ 1.f.);<sup>39</sup> a military exchange charge account with a balance of \$3,793 that was past due \$360 (SOR ¶ 1.g.); a jewelry store account for \$2,765 (SOR ¶ 1.h.); and two parking ticket debts owed to the local municipalities in the amounts of \$205 (SOR ¶ 1.i.) and \$200 (SOR ¶ 1.j.).

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<sup>30</sup> AI D (Amended Voluntary Petition, dated November 19, 2015). The actual creditors were not identified.

<sup>31</sup> AI E (Discharge of Debtor and Final Decree, dated January 22, 2016). The actual debts discharged were not identified.

<sup>32</sup> Item 4, *supra* note 3, at 2.

<sup>33</sup> AI D, *supra* note 30.

<sup>34</sup> AI D, *supra* note 30.

<sup>35</sup> AI D, *supra* note 30.

<sup>36</sup> AI B (Certificate of Counseling, dated September 28, 2015); AI C (Certificate of Debtor Education, dated October 13, 2015).

<sup>37</sup> Item 6, *supra* note 21.

<sup>38</sup> Item 7, *supra* note 20.

<sup>39</sup> Item 11 (Case Information, dated May 4, 2015).

As noted above, although Applicant repeatedly indicated that he was “paying” certain accounts, he failed to submit any documentary evidence of those purported payments. There is no documentary evidence as to when those “payments” started, to which creditors they were made, or what the unpaid balances before his bankruptcy discharge might have been. Applicant’s failure to submit more details related to the specific debts discharged by his most recent bankruptcy makes it impossible to determine which of the above debts were discharged and which were not. This is especially significant because certain types of debts are not discharged in bankruptcy. While not alleged in the SOR, Applicant also had a judgment on a state tax lien for \$1,442.33 entered in 2010,<sup>40</sup> and a judgment on an unspecified lien for \$2,990.71 entered in 2014.<sup>41</sup> Under the circumstances, it is difficult to determine if Applicant’s finances are under control or if he is still experiencing financial difficulties despite his recent bankruptcy discharge. Accordingly, in the absence of evidence to the contrary, it appears that Applicant’s financial problems are not under control.

## **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>42</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>43</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 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.

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<sup>40</sup> Item 12, *supra* note 22.

<sup>41</sup> Item 13 (Case Information, dated May 4, 2015).

<sup>42</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>43</sup> Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

In the decision-making process, facts must be established by “substantial evidence.”<sup>44</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>45</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>46</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>47</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 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:

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<sup>44</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>45</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

<sup>46</sup> *Egan*, 484 U.S. at 531.

<sup>47</sup> See Exec. Or. 10865 § 7.



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. Applicant has had a long-standing problem with his finances which started as early as the 1990's, and which is apparently continuing. Various accounts were placed for collection, judgments and liens were entered against him, and a house was foreclosed. Unsecured, nonpriority debts were discharged in July 2001 and again in January 2016. 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>48</sup>

AG ¶ 20(c) minimally applies. None of the remaining mitigating conditions apply. The nature, frequency, and recency of Applicant's continuing multi-year period of financial difficulties since the 1990's make it difficult to conclude that it occurred "so long

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<sup>48</sup> 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)).

ago” or “was so infrequent.” With the exception of his internet and telephone counseling on debt education and personal financial management in connection with his most recent bankruptcy filing, Applicant’s claimed relationships with financial counselors have never been fully explained or supported by documentation. Thus, it is insufficient to raise more than a minimal application of AG ¶ 20(d). Over the years, Applicant attributed his financial problems to a differing variety of factors: (1) purported nonspecific medical problems that caused him a loss in pay; (2) reliance on credit cards “to meet the demands of life,” upon being released from work; (3) an inability to find employment; (4) his financial mismanagement; (5) his failure to fully understand the true status of his finances and how to properly work with it; (6) irresponsibility (7) his August 2012 separation from his wife; (8) giving his wife sixty percent of his salary; and (9) the downturn in the housing market. Without some explanation as to the specific issues identified, how they were supposedly beyond his control, and some description of the impact on his ability to maintain his monthly payments, two of the identified factors take on added significance: financial mismanagement and irresponsibility.

Over the years, Applicant made a variety of promises about his intentions and said the right things as to what he had learned regarding financial management. After his 2001 bankruptcy discharge, he contended that he had spoken with financial counselors and was taught how to manage his money and debt, and that the knowledge he had gained would assist him in avoiding the financial predicaments. Subsequently, when he was again faced with financial problems, he said he would meet with his financial counselor to discuss his options; he would contact his creditors and start working to resolve the largest debts first; he had a budget that would give him approximately \$500 per month to pay creditors; and he intended to develop payment plans with each of his creditors. In 2013, he again claimed he had learned how to properly manage his money, and had developed a budget and stuck to it for the better part of a year. He said he had created a plan to repay all his debt over the course of the next 4 or 5 years. He failed to submit documentation to support any of his claims and contentions. Instead, it appears that Applicant never initiated a good-faith effort to make any payments on his delinquent accounts. He continued to avoid the payment of his debts for a number of years, and once again, sought the protections of the U.S. Bankruptcy Code for the second time in 15 years.

Security clearance adjudications are aimed at evaluating an applicant’s judgment, reliability, and trustworthiness. They are not a debt-collection procedure. The adjudicative guidelines do not require an applicant to establish resolution of each and every debt alleged in the SOR. An applicant need only establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant immediately resolve or make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in an SOR be paid first. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts one at a time. In this instance, there are alleged plans to resolve financial problems, but there is no documentation to support the existence of such plans. There were purported actions taken and some claimed payments made to some creditors, but there is no documentation to support the existence of Applicant’s actions or payments. Instead, there is some documentation reflecting bankruptcies. Applicant

has not acted responsibly by failing to address his delinquent accounts.<sup>49</sup> Applicant's lengthy period of inaction, except for the two bankruptcy petitions, under the circumstances confronting him cast substantial doubt on his current reliability, trustworthiness, and good judgment.<sup>50</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.

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>51</sup>

There is some evidence in favor of mitigating Applicant's conduct. He has been with his current employer since July 2009. He served honorably with the U.S. Navy for six years. He was granted a TS security clearance in 1990, and he retained it until December 2011. There is no evidence of criminal conduct, security violations, or the misuse of information technology systems.

The disqualifying evidence is more substantial. Largely due to Applicant's financial mismanagement and irresponsibility, various accounts became delinquent and were placed for collection. Judgements were obtained against him and liens were filed. A house was foreclosed. Although he repeatedly declared his intentions to contact his

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<sup>49</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.

<sup>50</sup> See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

<sup>51</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).

creditors and resolve his delinquent accounts, there is little evidence that he did so. He contended that repayment plans had been established and payments made for some of his accounts, but he failed to furnish documentation to confirm the establishment of repayment plans or payments made. Despite years of making promises of positive action, he failed to offer any documentation to support his claimed actions. In 2011, the DON CAF determined that because of his financial problems and his failure to provide necessary documentation sufficient to mitigate the financial considerations alleged against him, he was not eligible for access to SCI. Faced with continuing financial problems, Applicant sought the protection of bankruptcy discharges in 2001 and 2016. Without knowing which accounts were recently discharged and which accounts remain, and without more recent information regarding Applicant's current income and monthly expenses, it is impossible to determine if his finances are under control. Applicant's unsubstantiated actions regarding positive resolution efforts, and his repeated bankruptcy petitions, under the circumstances cast substantial doubt on his current reliability, trustworthiness, and good judgment.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:<sup>52</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 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 failed to demonstrate a "meaningful track record" of voluntary debt reduction and elimination efforts, in only resolving some of his delinquent debts by bankruptcy discharges, but without any proven efforts to actually pay his creditors. He failed to indicate which of his delinquent accounts, if any, listed in the SOR were affected by the most recent bankruptcy. Without supporting documentation, I cannot credit him with any positive efforts to resolve his delinquent accounts.

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<sup>52</sup> ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

Overall, the evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has failed to mitigate 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:                      AGAINST APPLICANT

Subparagraphs 1.a – 1.j:                      Against Applicant

### **Conclusion**

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

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ROBERT ROBINSON GALES  
Administrative Judge