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

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| In the matter of: | ) | |
| | ) | |
| --- | ) | ISCR Case No. 14-04616 |
| | ) | |
| Applicant for Security Clearance | ) | |

## Appearances

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

07/17/2017

## 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 August 4, 2012, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application.[1] On December 3, 2012, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a set of interrogatories. He responded to those interrogatories on December 13, 2012.[2] On February 9, 2015, 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 Classified Information*

[1] Item 4 (e-QIP, dated August 4, 2012).

[2] Item 6 (Applicant's Responses to Interrogatories, dated December 13, 2012.

(December 29, 2005) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006.[3] 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 interests of national security 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 March 2, 2015. In a sworn statement, dated March 3, 2015, Applicant responded to the SOR and elected to have his case decided on the written record in lieu of a hearing.[4] A complete copy of the Government's file of relevant material (FORM) was mailed to Applicant by the Defense Office of Hearings and Appeals (DOHA) on November 12, 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 previous Adjudicative Guidelines applicable to his case. Applicant received the FORM on November 16, 2015. Applicant's response was due on December 16, 2015. Applicant timely submitted a number of documents on December 3, 2015. The case was assigned to me on January 5, 2016. On July 22, 2016, Applicant separated from his employer-sponsor, and having lost jurisdiction of the matter by his separation, I returned the file to the administrative division without further action in September 2016. On October 31, 2016, Applicant obtained new sponsorship, and the case file was reassigned to me.

## Findings of Fact

In his Answer to the SOR, Applicant denied, with comments, all of the factual allegations pertaining to financial considerations (¶¶ 1.a. through 1.e.) of the SOR. Applicant's 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 60-year-old employee of a defense contractor. He has held an unspecified position with his employer since October 2016. He previously held a number of rather short-term positions over the years with various employers. He is a 1974 high school graduate. Applicant has never served in the U.S. military. He was granted a security clearance in 2003, the level of which is unclear, and was granted a top secret clearance with access to Sensitive Compartmented Information (SCI) in 2006. The SCI

[3] Effective June 8, 2017, by Directive 4 of the Security Executive Agent (SEAD 4), dated December 10, 2016, *National Security Adjudicative Guidelines* for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position, were established to supersede all previously issued national security adjudicative criteria or guidelines. Accordingly, those guidelines previously implemented on September 1, 2006, under which this security clearance review case was initiated, no longer apply. In comparing the two versions, there is no substantial difference that might have a negative effect on Applicant in this case.

[4] Item 3 (Answer to the SOR, dated March 3, 2015).

access was terminated in 2012. Applicant was married in February 2006 and divorced in March 2012. He has no children.

## Financial Considerations[5]

It is unclear what Applicant's finances were like before they became an issue. A combination of factors occurred in or before 2012 that apparently resulted in those issues: Applicant was divorced in March 2012; the loss of income due to being unemployed from January 2012 until May 2012; and, he was employed in Afghanistan from May 2012 until September 2012, when he was returned stateside to await the adjudication of his security clearance. The most significant factor attributed by him for his financial issues was the alleged identity theft by his ex-wife. Applicant contended that she opened various accounts in his name, using his Social Security Number without his knowledge or authority, and he was unaware that those accounts existed or went unpaid until they were already delinquent.

In early 2012, in an effort to address the financial issues he discovered as a result of his divorce, Applicant engaged the professional services of an attorney specializing in consumer fraud. Pursuant to 15 U.S.C. § 1666,[6] that attorney sent letters to various

[5] General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 3, *supra* note 4; Item 4, *supra* note 1; Item 5 (Combined Experian, TransUnion, and Equifax Credit Report, dated August 23, 2012; Item 6, *supra* note 2; Item 7 (Equifax Credit Report, dated April 5, 2014); Item 8 (Equifax Credit Report, dated July 7, 2015); and Experian Credit Report, dated November 16, 2015, attached to Applicant's Response to the FORM.

[6] **§1666. Correction of billing errors**

**(a) Written notice by obligor to creditor; time for and contents of notice; procedure upon receipt of notice by creditor**

If a creditor, within sixty days after having transmitted to an obligor a statement of the obligor's account in connection with an extension of consumer credit, receives at the address disclosed under section 1637(b)(10) of this title a written notice (other than notice on a payment stub or other payment medium supplied by the creditor if the creditor so stipulates with the disclosure required under section 1637(a)(7) of this title) from the obligor in which the obligor—

> (1) sets forth or otherwise enables the creditor to identify the name and account number (if any) of the obligor, (2) indicates the obligor's belief that the statement contains a billing error and the amount of such billing error, and (3) sets forth the reasons for the obligor's belief (to the extent applicable) that the statement contains a billing error,

the creditor shall, unless the obligor has, after giving such written notice and before the expiration of the time limits herein specified, agreed that the statement was correct—

> (A) not later than thirty days after the receipt of the notice, send a written acknowledgment thereof to the obligor, unless the action required in subparagraph (B) is taken within such thirty-day period, and (B) not later than two complete billing cycles of the creditor (in no event later than ninety days) after the receipt of the notice and prior to taking any action to collect the amount, or any part thereof, indicated by the obligor under paragraph (2) either—
>
> > (i) make appropriate corrections in the account of the obligor, including the crediting of any finance charges on amounts erroneously billed, and transmit to the obligor a notification of such corrections and the creditor's explanation of any change in the amount indicated by the obligor under paragraph (2) and, if

creditors requesting all records, including applications, signature cards, recorded conversations, and all information that the creditor(s) may have verifying that Applicant had applied for an extension of credit with the creditor(s). In late 2013, he also engaged the professional services of another law firm specializing in credit improvement and rehabilitation. That firm sent dispute letters to various creditors challenging the accuracy of reports to credit reporting agencies. The combined efforts by the two firms were ignored by some of the creditors, but others furnished responses.

The SOR identified five purportedly delinquent debts that had been placed for collection or charged off, as generally reflected by his August 2012 credit report, his April 2014 credit report, or his July 2015 credit report. Those debts, totaling approximately $38,389, their current status, according to the credit reports, other evidence submitted by the Government and Applicant, and Applicant's comments regarding same, are described below.

(SOR ¶ 1.a.): This is a bank-issued department store credit card individual account in Applicant's name with a $10,800 credit limit and unpaid balance of $21,611 that was placed for collection and charged-off.[7] Applicant denied that he had ever had a credit card with that particular creditor. On April 5, 2012, his initial attorney requested documentation regarding the account, but the creditor never responded to the request. The account was transferred or sold to at least two debt purchasers. A dispute was filed with the credit reporting agencies, and a request for information was subsequently made to the most recent holder of the account. Finally, in August 2014, that holder of the account responded to Applicant's inquiry and dispute. Based on the research of that company, the account was closed and the company directed the credit reporting agencies to delete the account.[8]

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> any such change is made and the obligor so requests, copies of documentary evidence of the obligor's indebtedness; or (ii) send a written explanation or clarification to the obligor, after having conducted an investigation, setting forth to the extent applicable the reasons why the creditor believes the account of the obligor was correctly shown in the statement and, upon request of the obligor, provide copies of documentary evidence of the obligor's indebtedness. In the case of a billing error where the obligor alleges that the creditor's billing statement reflects goods not delivered to the obligor or his designee in accordance with the agreement made at the time of the transaction, a creditor may not construe such amount to be correctly shown unless he determines that such goods were actually delivered, mailed, or otherwise sent to the obligor and provides the obligor with a statement of such determination.
>
> After complying with the provisions of this subsection with respect to an alleged billing error, a creditor has no further responsibility under this section if the obligor continues to make substantially the same allegation with respect to such error.

[7] Item 5, *supra* note 4, at 9; Item 7, *supra* note 4, at 5.

[8] Letter, dated April 5, 2012, attached to Item 3; E-mail, dated February 1, 2014, attached to Item 3. Addiing some confusion to the issue, there is another letter from the most recent holder of the account, dated February 16, 2012, attached to Item 6, stating that the account was to be deleted from Applicant's credit reports.

The account is not listed in Applicant's July 2015 credit report or the November 2015 credit report. The account has been resolved.

(SOR ¶ 1.b.): This is an unspecified type of bank-issued joint account with a high credit of $8,133 and unpaid balance of $7,935 that was placed for collection and charged-off (in January 2010).[9] Applicant denied that he had ever had an account with that particular creditor. On April 5, 2012, his initial attorney requested documentation regarding the account, but the creditor never responded to the request. A dispute was filed with the credit reporting agencies. Applicant's attorney advised him in January 2014 that a response would be due after approximately 60 days from the dispute. Neither action resulted in a response.[10] Applicant's November 2015 credit report does not mention that a dispute had been submitted, and it continued to report that the account was still unresolved as a potentially negative account. While there is evidence of attempts having been made to dispute the account, there is no evidence that the account has been resolved.

(SOR ¶ 1.c.): This is a bank credit card individual account in Applicant's name with a $4,000 credit limit and an unpaid balance of $5,331 that was placed for collection and charged off in June 2009.[11] Applicant denied that he had ever had a credit card account with that particular bank. On April 5, 2012, his initial attorney requested documentation regarding the account, but the creditor never responded to the request. A dispute was filed with the credit reporting agencies. Applicant's attorney advised him in March 2014 that a response would be due after approximately 60 days from the dispute. Neither action resulted in a response.[12] The account is not listed in Applicant's July 2015 credit report or the November 2015 credit report. Thus, it appears that he account has been resolved.

(SOR ¶ 1.d.): This is a bank-issued individual charge account for a woman's clothing store with a $1,930 credit limit and an unpaid balance of $2,194 that was placed for collection and charged off in September 2012.[13] Applicant denied that he had ever had an account with that particular creditor. On April 5, 2012, his initial attorney requested documentation regarding the account, but the creditor never responded to the request. A dispute was filed with the credit reporting agencies. Applicant's attorney advised him in January 2014 that a response would be due after approximately 60 days from the dispute. Neither action resulted in a response.[14] The account is not listed in Applicant's July 2015

[9] Item 5, *supra* note 4, at 6, 12; Item 7, *supra* note 4, at 5.

[10] Letter, dated April 5, 2012, attached to Item 3; E-mail, dated February 1, 2014Letter, dated August 8, 2014, attached to Item 3.

[11] Item 5, *supra* note 4, at 5; Item 7, *supra* note 4, at 6.

[12] Letter, dated April 5, 2012, attached to Item 3; E-mail, dated March 15, 2014, attached to Item 3.

[13] Item 7, *supra* note 4, at 6.

[14] Letter, dated April 5, 2012, attached to Item 3; E-mail, dated February 1, 2014, attached to Item 3.

credit report or the November 2015 credit report. Thus, it appears that the account has been resolved.

(SOR ¶ 1.e.): This is a bank-issued individual charge account for a department store with a past-due and unpaid balance of $1,318 that was placed for collection and charged off.[15] Applicant denied that he had ever had an account with that particular creditor. On April 5, 2012, his initial attorney requested documentation regarding the account, but the creditor never responded to the request. A dispute was filed with the credit reporting agencies. Applicant's attorney advised him in January 2014 that a response would be due after approximately 60 days from the dispute. Neither action resulted in a response.[16] Applicant's July 2015 credit report refers to a consumer dispute, but no decision was reflected. The account is not listed in his November 2015 credit report. It appears that the account has been resolved.

In addition to the accounts alleged in the SOR, Applicant discovered a number of other accounts that had been opened in his name without his knowledge or authorization. He disputed one bank-issued credit card in early 2012, and after an investigation, the bank determined that Applicant was not responsible for the "fraudulent transactions" associated with the card.[17] Any reference to the account was removed from his credit reports. Applicant's ex-wife also attempted to open an Internet account with a bank in July 2005 – using Applicant's name – but at that time, she had not yet married Applicant. On the application, she entered a false employment location as well as a false monthly salary (claiming she earned $43,000 per month). Applicant's attorney successfully disputed the account with the creditor in April 2012.[18]

On December 11, 2012, Applicant submitted a Personal Financial Statement to reflect his net monthly income; monthly expenses; and any monthly remainder that might be available for discretionary spending or savings. Although the figures furnished are now out of date, they reflect a monthly net income of $2,493.94; monthly expenses of $1,200; debt payments of $1,000; and a monthly remainder of $293.94. He also had a retirement plan worth $70,000.[19] There was no evidence of a budget. There is no evidence of any financial counseling. Nevertheless, Applicant is dedicated to resolving his few remaining financial issues associated with his identity theft. Because the majority of his accounts in his most recent credit report are listed as current, and he has taken positive steps to resolve a variety of accounts that were not listed in the SOR as well as those that were so listed, it appears that Applicant's finances are under control, especially since he now has a new position, and his attorneys have pursued the identity theft issues.

[15] Item 5, *supra* note 4, at 6; Item 7, *supra* note 4, at 6; Item 8, *supra* note 4, at 3.

[16] Letter, dated April 5, 2012, attached to Item 3; E-mail, dated February 1, 2014, attached to Item 3.

[17] Letter, dated May 10, 2012, attached to Item 6.

[18] Application, dated July 28, 2005, attached to Applicant's Answer to the SOR; Letter, dated April 23, 2012, attached to Applicant's Answer to the SOR.

[19] Personal Financial Statement, dated December 11, 2012, attached to Item 6.

## 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."[20] 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."[21]

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the guidelines in SEAD 4. In addition to brief introductory explanations for each guideline, the guidelines 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."[22] 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.[23]

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship

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

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

[22] "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).

[23] *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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."[24]

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."[25] 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 ¶ 18:

> Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns. Under ¶ 19(a), an "inability to satisfy debts*"* is potentially disqualifying. In addition, ¶ 19(b) may apply if there is an "unwillingness to satisfy debts regardless of the ability to do so."

[24] *Egan*, 484 U.S. at 531.

[25] *See* Exec. Or. 10865 § 7.

Similarly, under ¶ 19(c), "a history of not meeting financial obligations" may raise concerns. Applicant's credit reports reflect a number of delinquent accounts. As noted by Department Counsel, the Government is entitled to rely on credit reports in these proceedings as ordinary business record exceptions to the hearsay rule. There was no evidence submitted "to establish that those documents were improperly or irregularly produced, or produced in circumstances that would render their reliability suspect."[26] Applicant's stand on principle led him to refuse, for a relatively lengthy period, to pay off those accounts which he felt were not his. ¶¶ 19(a), 19(b), and 19(c) apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under ¶ 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 ¶ 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances." Evidence that "the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control" is potentially mitigating under ¶ 20(c). Similarly, ¶ 20(d) applies where the evidence shows "the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts."[27] In addition, ¶ 20(e) may apply if "the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue."

I have concluded that ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(e) apply. As noted above, a combination of factors occurred in or before 2012 that apparently resulted in Applicant's financial issues. He was divorced in March 2012; he lost income due to being unemployed from January 2012 until May 2012; and, although he was employed in Afghanistan from May 2012 until September 2012, he was returned stateside to await the

[26] ISCR Case No. 07-08925 at 3 (App. Bd. September 15, 2008).

[27] 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)).

adjudication of his security clearance. However, the most significant factor attributed by him for his financial issues was the alleged actions by his ex-wife. Applicant contended, and he has proven in several instances, that, even before they were actually married, she opened various accounts in his name, using his Social Security Number without his knowledge or authority, and he was unaware that those accounts existed or went unpaid until they were already delinquent. Applicant was the innocent victim of identity theft.

The nature, frequency, and recency of Applicant's continuing financial difficulties since about 2012 make it difficult to conclude that it occurred "so long ago" or "was so infrequent." However, the series of events that resulted in his financial problems commenced under such circumstances that it is unlikely to recur for they started before he was married and ended with his divorce. The lingering effects of his ex-wife's actions are still being felt in light of the slow actions and inaction by some of his creditors and the credit reporting agencies in complying with the law. 15 U.S.C. § 1681c-2 requires timely actions related to complaints involving identity theft.[28] Applicant's attorneys notified both

[28] **§ 1681c–2 - Block of information resulting from identity theft**

(a) **Block**
Except as otherwise provided in this section, a consumer reporting agency shall block the reporting of any information in the file of a consumer that the consumer identifies as information that resulted from an alleged identity theft, not later than 4 business days after the date of receipt by such agency of—

> (1) appropriate proof of the identity of the consumer; (2) a copy of an identity theft report; (3) the identification of such information by the consumer; and (4) a statement by the consumer that the information is not information relating to any transaction by the consumer.

(b) **Notification**
A consumer reporting agency shall promptly notify the furnisher of information identified by the consumer under subsection (a) of this section—

> (1) that the information may be a result of identity theft; (2) that an identity theft report has been filed; (3) that a block has been requested under this section; and (4) of the effective dates of the block.

(c) **Authority to decline or rescind**

(1) **In general**
A consumer reporting agency may decline to block, or may rescind any block, of information relating to a consumer under this section, if the consumer reporting agency reasonably determines that—

> (A) the information was blocked in error or a block was requested by the consumer in error; (B) the information was blocked, or a block was requested by the consumer, on the basis of a material misrepresentation of fact by the consumer relevant to the request to block; or (C) the consumer obtained possession of goods, services, or money as a result of the blocked transaction or transactions.

(2) **Notification to consumer**
If a block of information is declined or rescinded under this subsection, the affected consumer shall be notified promptly, in the same manner as consumers are notified of the reinsertion of information under section 1681i (a)(5)(B) of this title.

(3) **Significance of block**
For purposes of this subsection, if a consumer reporting agency rescinds a block, the presence of information in the file of a consumer prior to the blocking of such information is not evidence of

the creditors and the credit reporting agencies of the identity theft, but while several of those entities performed due diligence in investigating the allegations and closing out and blocking the account information, several of them failed to do so. The identity theft, the divorce, and the unemployment were factors beyond Applicant's control. Applicant's limited ability to extract documentation from creditors and credit reporting agencies, or to motivate them to comply with the law, are also beyond his control. The evidence clearly establishes that there was identity theft regarding several accounts, and Applicant furnished documentation from his attorneys and some creditors and credit reporting agencies to confirm those facts. His inability to present documentation to support his contentions regarding all of the disputed accounts is not to be construed as a failure or refusal to do so. Applicant initiated and continues to adhere to a good-faith effort to resolve the overdue accounts that were alleged to be his responsibility. He addressed several accounts that were not listed in the SOR and also those that were so listed.

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whether the consumer knew or should have known that the consumer obtained possession of any goods, services, or money as a result of the block.

(d) **Exception for resellers**

(1) **No reseller file**
This section shall not apply to a consumer reporting agency, if the consumer reporting agency—

> (A) is a reseller; (B) is not, at the time of the request of the consumer under subsection (a) of this section, otherwise furnishing or reselling a consumer report concerning the information identified by the consumer; and (C) informs the consumer, by any means, that the consumer may report the identity theft to the Bureau to obtain consumer information regarding identity theft.

(2) **Reseller with file**
The sole obligation of the consumer reporting agency under this section, with regard to any request of a consumer under this section, shall be to block the consumer report maintained by the consumer reporting agency from any subsequent use, if—

> (A) the consumer, in accordance with the provisions of subsection (a) of this section, identifies, to a consumer reporting agency, information in the file of the consumer that resulted from identity theft; and (B) the consumer reporting agency is a reseller of the identified information.

(3) **Notice**
In carrying out its obligation under paragraph (2), the reseller shall promptly provide a notice to the consumer of the decision to block the file. Such notice shall contain the name, address, and telephone number of each consumer reporting agency from which the consumer information was obtained for resale.

(e) **Exception for verification companies**
The provisions of this section do not apply to a check services company, acting as such, which issues authorizations for the purpose of approving or processing negotiable instruments, electronic fund transfers, or similar methods of payments, except that, beginning 4 business days after receipt of information described in paragraphs (1) through (3) of subsection (a) of this section, a check services company shall not report to a national consumer reporting agency described in section 1681a (p) of this title, any information identified in the subject identity theft report as resulting from identity theft.

(f) **Access to blocked information by law enforcement agencies**
No provision of this section shall be construed as requiring a consumer reporting agency to prevent a Federal, State, or local law enforcement agency from accessing blocked information in a consumer file to which the agency could otherwise obtain access under this subchapter.

Despite his periodic unemployment, Applicant's efforts resulted in the successful resolution of a number of accounts.

Clearance decisions are aimed at evaluating an applicant's judgment, reliability, and trustworthiness. They are not a debt-collection procedure. The guidelines do not require an applicant to establish resolution of each and every debt alleged in the SOR. An applicant needs only to 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.

While there is no evidence to indicate that Applicant ever received financial counseling, and it remains unclear if he currently has funds remaining at the end of each month for discretionary use or savings, there is evidence to reflect that Applicant's financial problems are under control. His most recent credit report reflects the vast majority of his accounts are current, and his more recent resolution of accounts improved his current financial record. Under the circumstances, Applicant acted responsibly by addressing his delinquent accounts and by initiating efforts to work with his alleged creditors.[29] Applicant's actions under the circumstances no longer cast doubt on his current reliability, trustworthiness, and good judgment.[30]

**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 SEAD 4, App. A, ¶ 2(d):

> (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.

[29] "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.

[30] *See* ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

Under SEAD 4, App. A, ¶ 2(c), the ultimate determination of whether to grant 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.[31]

There is some evidence against mitigating Applicant's conduct. A number of accounts in Applicant's name became delinquent, and others to be charged off. He submitted no financial information to indicate his current financial status, and he failed to submit some documentation regarding some of his SOR-related accounts.

The mitigating evidence under the whole-person concept is simply more substantial. There is no evidence of misuse of information technology systems, or mishandling protected information. He candidly acknowledged having some financial difficulties as the victim of identity theft with several creditors when he completed his e-QIP. A series of events that resulted in his financial problems commenced under such circumstances that it is unlikely to recur for they started before he was married and ended with his divorce. The lingering effects of his ex-wife's actions are still being felt in light of the slow actions and inaction by some of his creditors and the credit reporting agencies in complying with the law. Applicant hired two law firms to assist him in fighting the results of his identity theft. Their combined efforts resolved a number of non-SOR accounts as well as most of those alleged in the SOR. Only one such account remains unresolved.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:[32]

> 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

[31] *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).

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

debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

Applicant has demonstrated a positive track record of debt reduction and elimination efforts, aggressively addressing the debts in his name, and promising to take additional corrective actions. His efforts were hindered by his employment situation and the failure of some creditors and credit reporting agencies to comply with 15 U.S.C §§ 1666 and 1681c-2. 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* SEAD 4, App. A, ¶ 2(d)(1) through AG ¶ 2(d)(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. through 1.e: For Applicant

## Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security 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