



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



In the matter of:)	
)	
(Redacted))	ISCR Case No. 15-04517
)	
Applicant for Security Clearance)	

Appearances

For Government: Rhett C. Petcher, Esq., Department Counsel
For Applicant: Donna Price, Esq.

05/08/2017

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant filed a Chapter 7 bankruptcy petition in August 2010 when he discovered that a debt resolution firm retained to negotiate with his creditors had made no payments on his debts. After converting his bankruptcy to Chapter 13, he had his case dismissed and negotiated settlements of some debts. His other debts were cancelled by the creditors, including two charged-off credit card debts totaling \$32,024. He reported the cancelled debt as income on his taxes and has not incurred any new delinquent accounts in the last five years. Clearance is granted.

Statement of the Case

On February 17, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, and explaining why it was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DOD CAF took the action under Executive Order 10865 (EO), *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review*

Program (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG) effective within the DOD on September 1, 2006.

On March 5, 2016, Applicant answered the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On July 20, 2016, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On July 22, 2016, I scheduled a hearing for August 10, 2016. On August 4, 2016, counsel for Applicant entered her appearance and requested a continuance. I granted the continuance and cancelled the hearing. On August 25, 2016, I rescheduled the hearing for September 28, 2016.

I convened the hearing as rescheduled. Four Government exhibits (GEs 1-4) and 12 Applicant exhibits (AEs A-L)¹ were admitted into evidence without objection. Applicant and four witnesses testified, as reflected in a transcript (Tr.) received on October 12, 2016. On January 7, 2017, counsel for Applicant submitted one correction for the transcript.² I made the change, which was consistent with other testimony. See Tr. 113.

Summary of SOR Allegations

The SOR alleges under Guideline F that Applicant filed a Chapter 7 bankruptcy petition in August 2010 that was converted to a Chapter 13 bankruptcy in February 2011 before Applicant had it dismissed (SOR ¶ 1.a). Additionally, as of February 17, 2016, Applicant allegedly owed charged-off balances of \$17,882 (SOR ¶ 1.b) and \$18,013 (SOR ¶ 1.c). In his *pro se* response to the SOR allegations, Applicant admitted the bankruptcy filing after he had made payments to a debt settlement company that failed to address his debts. When his financial situation stabilized, he converted his bankruptcy to a Chapter 13. He indicated that he voluntarily had the bankruptcy dismissed after he received an insurance settlement. He negotiated repayment terms with those creditors who contacted him, but on legal advice, he did not repay the charged-off debts in SOR ¶¶ 1.b and 1.c.

Findings of Fact

After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 38-year-old college graduate (GE 1) with a bachelor's degree in computer science awarded in May 2001 and a master's degree in business administration awarded in May 2003. (AEs K.1-K.2; Tr. 78-79.) Since January 2014, he has been employed as a computer engineer for a small computer software company (company X) with defense contracts. He seeks his first DOD security clearance. (Tr. 80.) Applicant has

¹ Some of Applicant's exhibits contain separate documents that are differentiated numerically. For example, AE A consists of ten separate documents, which were entered as AE A.1-A.10.

² In the printed version of the transcript, the change is on page 92 line 4.

also had a part-time business in robot design and manufacturing since October 2012. (GEs 1, 2.)

Applicant worked for an electronics retailer from January 2004 to January 2007, when the company ceased operations. In February 2007, Applicant became employed by a company involved in computer security products for the commercial sector. In July 2007, Applicant purchased his townhouse. He obtained a 30-year mortgage loan of \$229,000, to be repaid at \$1,878 per month. (GE 4; Tr. 81, 83.) He incurred \$10,000 or more on credit cards for minor repairs, painting, and furnishing his townhouse. (Tr. 87.) As a first-time homeowner who had moved from his parents' home, he was not prepared for all the bills, such as water and sewer, utilities, condominium/townhouse fees, home insurance, and home maintenance. (Tr. 106-107.)

In April 2008, Applicant married his spouse, who had a four-year-old son from a previous relationship. In August 2008, Applicant and his spouse had a daughter. (GEs 1, 2; AE J; Tr. 54-55, 83.) Applicant and his spouse struggled financially because of daycare at \$1,300 a month, other expenses for their children, and the costs of homeownership. (Tr. 55, 58-59, 84-85, 106.) More than one third of his spouse's income of \$42,000 to \$43,000 a year went to daycare. (Tr. 84, 96.) Applicant's annual salary of about \$50,000 went to pay the mortgage and other bills. (Tr. 97.)

By September 2009, Applicant's townhouse was worth about \$30,000 less than what he owed on his mortgage loan. He also owed about \$57,500 in consumer credit debt, some \$32,000 of it on two closed accounts with a bank (SOR ¶¶ 1.b and 1.c). Applicant was making his monthly payments, but at considerable strain to the household budget. His creditors were not willing to work with him on reducing his payments because he was not delinquent. (Tr. 55, 89.) After seeing an advertisement (Tr. 89, 122), Applicant contacted a debt settlement firm, which advised him that a credit union holding \$11,000 of his debt was unlikely to settle. However, the company asserted that it could settle his remaining credit debt of \$46,400 for \$18,600 plus service fees totaling \$6,962 in return for payments of \$608 monthly for 3.5 years or \$532 monthly for four years. (AEs A.1-A.2.) Applicant enrolled in the debt repayment plan, agreeing to pay \$576 per month. The debt settlement firm left it to Applicant whether to continue to make payments to his creditors outside the plan. However, Applicant was also advised that 100% of its clients stopped making payments to creditors after they enrolled in the program. (AEs A.3-A.7.) Applicant authorized automatic withdrawal from his bank account of monthly payments to the debt settlement firm. (Tr. 89, 110.)

Applicant continued to receive collection calls that led him to inquire of the debt settlement company about actions taken on his behalf. As of January 2010, he was being told to forward collection notices to the debt settlement firm. (AE A.6.) In April 2010, Applicant received a summons about a judgment action brought against him by a credit lender owed approximately \$12,000. (AEs A.9-A.10.) Applicant continued to follow up with the debt settlement firm about the court case. On June 16, 2010, the debt settlement firm advised him about a court date for July 1, 2010, but also that it had a payment option for him. (AE A.10.)

As of June 2010, Applicant's credit score was only 550, and he owed \$60,683 in revolving credit card debt. Half of his accounts were past due. (AE I.1.) Concerned about the lawsuit and the lack of any demonstrated progress on debt resolution by the debt settlement company, Applicant consulted an attorney. On legal advice, he stopped his automatic payments to the debt settlement firm, and he filed for Chapter 7 bankruptcy to stay collection efforts while he formed a plan to address his debts. (GE 2; Tr. 90.) As of September 2016, Applicant had not been reimbursed for his payments to the debt settlement firm. He believes the company no longer exists. (Tr. 110, 112.)

In August 2010, Applicant filed a Chapter 7 bankruptcy petition listing \$60,923 in unsecured, nonpriority claims. He listed debts of \$1,652 and \$12,020 to a credit card company; \$17,882 on a line of credit and \$18,013 on a credit card account to a bank (SOR ¶¶ 1.b and 1.c); \$240 and \$10,230 to a credit union; and \$886 to an electronics retailer. On monthly joint take-home pay of \$6,452, Applicant reported net household income of \$312 per month after expenses, including the mortgage payment of \$1,878, a condominium fee of \$207, and daycare expenses of \$1,745. Applicant was repaying a 401(k) loan at \$107 per month. (AE C.) In February 2011, Applicant's bankruptcy was converted to a wage-earner's Chapter 13 bankruptcy. (GE 2.) After Applicant and his spouse received an income tax refund of \$8,611 for tax year 2010, Applicant amended his schedule C to claim his \$4,305 share as exempt. Applicant proposed to pay \$300 a month for 60 months from which \$16,200 would be disbursed to his unsecured creditors in the bankruptcy. (AE C.)

In March 2011, Applicant was the victim in a motor vehicle accident in which his vehicle was a total loss. (AE C; Tr. 65.) With an insurance claim pending, in June 2011, he petitioned for a dismissal of his bankruptcy with the intention of negotiating repayment terms with his creditors. (Tr. 64, 91.) On June 28, 2011, his Chapter 13 case was dismissed. He was refunded payments totaling \$630 to the trustee. (AE C.) On November 15, 2011, Applicant paid his \$240 debt with the credit union. (GE 4; AE G.)

In March 2012, Applicant received an insurance settlement of \$11,000 from the automobile accident. (AE B.) He used \$4,000 of the settlement to pay off his spouse's car and obtained a new car loan for a minivan that they paid off in the summer of 2016 when they purchased another minivan. (Tr. 92, 113.) Some of the settlement funds went to pay his attorney and some went to settle debts. (Tr. 92.) He disputed the \$1,652 debt included on his bankruptcy petition. (Tr. 93-94.) In March 2013, he settled his \$12,100 debt with the same lender for half its balance. (Tr. 94.) The lender cancelled the remaining balance of \$6,020. (AE E.1.) On July 9, 2013, Applicant paid in full the remainder of his delinquent debt owed to the credit union. (GE 4; AE G; Tr. 95.)

Applicant's bankruptcy attorney advised him to negotiate with those creditors who pursued collection. (Tr. 115.) After charging off Applicant's debts, the creditor identified in SOR ¶¶ 1.b and 1.c issued Cancellation of Debt (1099-C) forms reporting the discharge of a line of credit debt of \$16,171 and a credit card debt of \$15,853 in December 2012. (AE D; Tr. 95, 116.) On their joint federal and state income tax returns for 2012, Applicant and his spouse listed the \$32,024 in cancelled debt (SOR ¶¶ 1.b and 1.c) as income, but reported an equal amount in business setup charges. (AE F.1.)

Applicant and his spouse reported a federal tax overpayment of \$4,975 and a state tax overpayment of \$866 on their income tax returns for 2013 after \$3,828 in losses from his part-time robotics business. (AE F.2.) On March 16, 2015, the IRS notified them that they owed a tax debt of \$1,860 in part because they did not include on their return the \$6,020 in debt cancelled in March 2013. (AE E.1.) They paid the tax due in May 2015. (AE E.2.)

In March 2013, Applicant refinanced his mortgage loan on his townhouse under the Home Affordable Modification Program (HAMP). (Tr. 107.) He obtained a new loan of \$221,300, which reduced his monthly payment obligation from \$1,850 to \$1,419. (GE 4; Tr. 63, 98.)

Applicant started his present employment in January 2014 at a starting annual salary of \$104,000. (Tr. 123.) On March 14, 2014, Applicant certified to the accuracy of a Questionnaire for National Security Positions (SF 86). Applicant listed his Chapter 13 bankruptcy filing that was dismissed. He added that settlements were negotiated and the remainder was charged off in a 1099-C. Applicant responded negatively to inquiries concerning delinquency involving routine accounts in the past seven years. (GE 1.)

As of April 14, 2014, the creditor in SOR ¶¶ 1.b and 1.c was still reporting charged-off collection balances of \$17,881 and \$18,011 after the debt cancellations. Applicant was making payments according to account terms on a credit card account opened in January 2013 with a current balance of \$3,914 and on his mortgage, which had a balance of \$217,607 as of February 2014. (GE 3.)

On May 7, 2014, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). Applicant explained that he had filed for bankruptcy initially under Chapter 7 in August 2010 after a debt settlement firm had failed to make any payments on his debts. The bankruptcy was then converted to a Chapter 13 because of his debt-to-income ratio. He had the bankruptcy dismissed and negotiated with most of his creditors after receiving an insurance settlement. He admitted that he had made no attempt to repay the debts in SOR ¶¶ 1.b and 1.c, but that he had to pay the taxes on the charged-off amounts. Applicant characterized his financial situation as not as good as he would like, but he was caught up on his bills and able to accumulate some savings. He attributed his financial difficulties to purchasing his home during the housing boom and to having child care expenses of \$1,200 to \$1,300 per month. (GE 2.)

As of November 2015, Applicant had three open accounts on his credit record: his mortgage loan, on which he was paying \$1,500 a month; the credit card account, which had a balance of \$7,143; and an overdraft protection account opened in July 2015 with an initial deposit of \$6,000 to rehabilitate his credit. He borrowed against the account and received positive credit for repayments. The account balance was \$5,651 as of November 2015. (GE 4; AE I.2; Tr. 118.)

As of September 2016, Applicant and his spouse's financial situation had improved significantly, even though Applicant still owed more on his mortgage than the townhome is worth. (Tr. 109.) They no longer had daycare or afterschool care costs. (Tr. 57, 72-73. In approximately 2013, Applicant eliminated cable television services. (Tr. 104, 126.) Applicant's spouse had obtained a new job in October 2014 that increased her income by \$3,000 annually. She now earns approximately \$75,000 a year as a field service engineer. (Tr. 59-60.) Applicant's annual salary is \$105,000 plus any bonuses. (Tr. 97.) They have \$449 in net monthly income after paying their expenses. About \$225 of their monthly income is from rent paid to him for sharing space that he leases in an old mill. (AEs H.1, K.12-K.13.) Applicant had retirement assets of \$33,041 in an IRA and \$23,690 in a 401(k). His spouse had retirement savings of \$12,606 through her present employer (AE H.2) and about \$20,000 from her previous employer. (Tr. 68.)

Applicant is making payments according to account terms on his mortgage and the credit card account (\$6,297 balance) opened in January 2013. In May 2016, he opened a revolving charge account with a \$1,500 credit limit. He had paid off the high balance on the account of \$819. As of August 31, 2016, the overdraft protection account had been paid and was closed with a zero balance. (AE I.3; Tr. 119.) He had brought his credit score to 693. (AE I.3.) Applicant's spouse testified that she learned "not to bite off more than you can chew" with regard to spending on credit. (Tr. 57-58.)

Work and Character References

A partner in company X is a retired lieutenant colonel in the United States military who has maintained DOD security clearances since he was 18 or 19. (Tr. 30.) He attested that Applicant has shown aptitude and initiative. He considers Applicant to be an excellent addition to the team both professionally and socially. He is aware that Applicant has had some financial issues but also that he has made efforts to address them. Aware that Applicant had some debt issues but not the details, he would trust Applicant to hold a sensitive position and safeguard the nation's secrets. Applicant owns his mistakes when they happen and takes responsibility for fixing them. (AE L.3; Tr. 31-34.)

The company's president served as an officer in the United States military for 13 years. He has held DOD security clearances for almost 30 years. He interacts with Applicant daily and has never known him to be other than honest, hardworking, and reliable. Applicant has been trusted to work remotely from home on occasion due to family needs, and he accomplishes his assigned tasks. Applicant has been routinely entrusted with the corporate credit card for supply purchases with no problems. Aware of the issues in the SOR, the company's president believes Applicant is fiscally responsible and prudent. (AE L.5.)

The company's director, who is responsible for managing the security compliance of their product and services, has held high level of security clearances. He has known Applicant on and off for 12 years. They previously worked together for the commercial software security company. He recruited Applicant for his team at company X because of Applicant's focus on customer satisfaction and his integrity in addressing issues head on.

He has been able to count on Applicant, who he described as “a straight shooter.” Applicant is responsible for providing customer support and maintenance for company X’s second largest account. The customer gave the company “glowing reviews” for its support, which the director attributes to Applicant. (AE L.8; Tr. 19-25.) Applicant recently told the director about his bankruptcy that he had dismissed and that he had worked out a plan to resolve his debts. Applicant explained that he had been “underwater” as a result of the financial crisis of 2007-2008 and that an entity he worked with to resolve the debts had been less than reputable. (Tr. 26-27.)

An engineer for company X has known Applicant since they were college classmates in 1997. They continued their friendship after college, and for a time, they were co-workers at Applicant’s previous employment as well as neighbors. When an engineer position opened at company X, this engineer recommended Applicant. Their families have spent a considerable amount of time together over the years, and he trusts Applicant with his children. Applicant has never given any indication of frivolous spending. This engineer was unaware that Applicant had some financial issues before he read the SOR. Based on his observations, Applicant has appeared to live within his means with regard to his household furnishings and car ownership. (AE L.10.)

A bank vice president, who has been responsible for monitoring investment risks for clients around the globe, has known Applicant socially for over seven years after meeting through their children’s activities. He has observed Applicant to be a responsible and fair parent and as an effective mentor to a dozen middle-school aged students as the lead parent volunteer for an extracurricular activity. He attested to Applicant’s good character. While surprised to learn of Applicant’s financial issues,³ he understands from Applicant that he has been resolving them. (AE L.1.)

An electrical engineer, who has known Applicant for the past five years through their children’s school and scouting, has held a DOD security clearance in the past to assist his employer’s customers. This electrical engineer and Applicant have become good friends because of their shared interests in computing, electronics, and robotics. Applicant has displayed intelligence and an ability to “think on his feet and come up with interesting solutions to problems.” Having reviewed the SOR, this engineer does not believe that Applicant’s prior financial issues should impact his application for security clearance eligibility. Applicant has always shown good judgment and self-control. (AE L.4.)

A police officer with 15 years of law enforcement experience has known Applicant since they were high school freshman together. He admires Applicant for always striving to do the right thing even in the face of opposition. Applicant has appropriately managed funds involving trips and reunions with friends and family. He has found Applicant to be honest, reliable, responsible, and trustworthy and would have no hesitation granting security clearance eligibility to Applicant. (AE L.2.)

³ Applicant testified that he told his references only the “broad financial issues,” but if they asked, he told them what they wanted to know. (Tr. 103.) None of his references appears to have had a detailed understanding of his financial situation.

Friends since Applicant's college days recommend him for a security clearance. An accountant, who now holds a position in corporate finance and administration, indicated that Applicant is someone who takes his responsibilities seriously. In her opinion, Applicant would never put himself in a position to compromise his professional integrity. (AE L.7.)

A coordinator for a local school district authored a character reference and testified for Applicant. She collaborated with Applicant on several assignments when they were in college together, she as an older student. Despite the age difference between them, they continued to be friends and have occasional contact at present. Applicant has been someone who takes his work and family obligations seriously. (AE L.9; Tr. 41-45.) About Applicant's finances, she testified that Applicant "puts his family first and wants to take good care of them and wants to do the best that he can to provide for them." She expressed no reservations about Applicant's trustworthiness with regard to being granted access to classified information. (Tr. 46.) In 2010, they "brainstormed" together about his financial options, but she knew little about the details of his finances or even what steps he took to resolve his debts. (Tr. 47-48.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant's eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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 decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

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. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Section 7 of EO 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concerns about financial considerations are set forth 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.

Applicant struggled to pay some consumer credit debts after he bought a home in July 2007, married in April 2008, and had daycare costs for two children. He filed a Chapter 7 bankruptcy petition in August 2010 after a debt settlement company failed to make payments to his creditors. His case was converted to a Chapter 13 in February 2011, but he had his bankruptcy dismissed in June 2011. He paid off some past-due debts under negotiated settlements, including a \$12,000 debt for about half its balance. The lender cancelled his remaining debt of \$6,020 in March 2013. In December 2012, Applicant’s debts of \$16,171 on a line of credit (SOR ¶ 1.b) and \$15,853 on a credit card (SOR ¶ 1.c) were cancelled by his creditor bank. As of November 2015, those debts were still on Applicant’s credit record as unpaid balances of \$17,882 (SOR ¶ 1.b) and \$18,013 (SOR ¶ 1.c), despite their cancellation and their inclusion as income on Applicant and his spouse’s federal and state income tax returns. Cancellation of debt for tax purposes does not necessarily render the debt legally unenforceable. Even if debts have been forgiven or paid, the administrative judge can consider the underlying circumstances in deciding whether an applicant possesses the judgment and reliability that must be demanded of persons with access to classified information. See ISCR Case No. 15-04560 at 3 (App. Bd. Oct. 21, 2016) (citing ISCR Case No. 14-02394 at 3-4 (App. Bd. Aug. 17, 2015)). Applicant’s history of delinquency raises security concerns under AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.” His bankruptcy filing is a legal way to address financial problems and does not

raise security concerns independent of the delinquent debts that led him to file for bankruptcy.

Mitigating condition AG ¶ 20(a), “the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment,” applies in that the debts were not incurred recently. However, Applicant did not display sound financial judgment in some aspects. He took on more debt than he could reasonably afford when he bought his townhouse in July 2007, not taking into consideration all of the costs that come with owning a home, such as utilities, insurance, and maintenance. Then, when he was struggling to make the payments on his large credit card balances, he enrolled in a debt settlement program in September 2009 in response to an advertisement without investigating the company’s record of success in resolving debts for its clients.

AG ¶ 20(b), “the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances,” is applicable in part. He obtained a mortgage loan of \$229,000 that he could barely afford in July 2007, but he did not have any control over the economic conditions that led to the decline in the value of his townhouse. By September 2009, he was “underwater” approximately \$30,000 on his home. He had no success in refinancing his mortgage loan until March 2013. Applicant and his spouse did not plan on having their daughter so soon, and her daycare costs were an added burden on the household finances.

AG ¶ 20(b) requires that an individual act responsibly to address financial issues. In that regard, Applicant did not help his financial situation by trusting in a debt settlement firm that received approximately \$6,000 of his money and did little for him in return. After he received notice of court action being taken by a creditor, he acted responsibly in consulting an attorney, cancelling the debt settlement agreement, filing for a Chapter 7 to stay collection activities, converting his bankruptcy to a Chapter 13, and then dismissing the bankruptcy in favor of negotiating with his creditors. The credit union received full satisfaction. Another creditor settled Applicant’s \$12,020 debt for \$6,000.

Yet, it is difficult to find that Applicant acted fully responsibly toward the creditor owed approximately \$32,024 in December 2012 (SOR ¶¶ 1.b and 1.c). Debt write-off and cancellation does not establish AG ¶ 20(b) or AG ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” It may have made sense financially for Applicant to give priority to those creditors not willing to charge off his debts, but the lender owed the debts in SOR ¶¶ 1.b and 1.c received no satisfaction while Applicant enjoyed the goods or services provided to him on credit. Moreover, because of start-up charges for his part-time robotics business, the additional income from the cancellations did not result in a tax underpayment for 2012.

However, when considering his financial situation as a whole, Applicant has established mitigation under AG ¶ 20(c), “the person has received or is receiving

counseling for the problem and/or there are clear indications that the problem is being resolved or is under control.” He has not incurred any new delinquencies in the last five years. There is no evidence of any late payments on any utilities or his home loan. With the increase in their respective employment incomes, Applicant and his spouse have sufficient discretionary income for any unplanned expenses. They are more careful in monitoring their spending and have eliminated some expenses in the past few years, such as cable television services. His spouse testified that she learned not to rely on credit beyond what they can afford to repay. They have managed to accumulate some savings and retirement assets.

In evaluating Guideline F cases, the Appeal Board has established that an applicant is not required to pay off every debt in the SOR:

The Board has previously noted that the concept of a meaningful track record necessary 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 has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrated that he has established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant’s financial situation and evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. There is no requirement that the plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payments 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.

See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted). Applicant has no present plan to address the charged-off balances in the SOR. At the same time, a security clearance adjudication is not aimed at collecting an applicant’s personal debts. It involves an evaluation of an applicant’s judgment, reliability, and trustworthiness in light of the security guidelines in the Directive. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). Given the debt write-off and forgiveness through cancellation, Applicant will not likely be pursued for the debts in SOR ¶¶ 1.b and 1.c. His efforts to address his other debts provide some confidence that he will make repayment arrangements if he is contacted by the creditor about the debts.

Whole-Person Concept

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(a).⁴ The analysis under Guideline F is incorporated in my whole-

⁴ The factors under AG ¶ 2(a) are as follows:

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the

person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant was 28 years old but financially naïve when he bought his townhouse. He “brainstormed” about solutions to his debt problems with a friend from college, but did not share the details of his financial problems and acted rather impulsively in enrolling in the debt settlement program. Since then, he has relied on legal advice with regard to resolving his debts and taken positive steps to where his financial situation is now sound, albeit partially through creditor forgiveness of \$16,171, \$15,853, and \$6,020 of his debt.

Applicant’s work record is unassailable with regard to his performance and dedication. He has been routinely trusted with a corporate credit card for purchases without any concerns. His co-workers, some of whom had an opportunity to work with Applicant with another employer, attest to his reliability and trustworthiness. They have some knowledge of Applicant’s past financial issues from reviewing the SOR, but they also believe Applicant is fully capable of fulfilling the responsibilities of security clearance eligibility. Applicant’s financial problems are not likely to recur. After considering all the facts and circumstances, I conclude that it is clearly consistent with the national interest to grant Applicant security clearance eligibility.

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
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Subparagraphs 1.a-1.c:	For Applicant
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Conclusion

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

Elizabeth M. Matchinski
Administrative Judge

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.