



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



In the matter of:

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ISCR Case No. 15-05715

Applicant for Security Clearance

**Appearances**

For Government: Tovah Minster, Esq., Department Counsel

For Applicant: Leon J. Schachter, Esq.

02/16/2017

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) alleges an unpaid debt owed to the Social Security Administration (SSA) for \$93,372. After he exhausted most of his SSA appeals, he settled and paid the SSA debt. Applicant timely filed all federal income tax returns, and timely paid all federal income taxes. Applicant does not have any delinquent debts, and he has a track record of paying his debts. He has been deployed to Afghanistan for more than four years, and he is currently deployed to Afghanistan. Financial considerations security concerns are mitigated. Access to classified information is granted.

**History of the Case**

On December 19, 2014, Applicant completed and signed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Government Exhibit (GE) 1) On June 7, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant pursuant to Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), which became effective on September 1, 2006.

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance

for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. (Hearing Exhibit (HE) 2) Specifically, the SOR set forth security concerns arising under the financial considerations guideline.

On July 1, 2016, Applicant responded to the SOR and requested a hearing. On September 7, 2016, Department Counsel indicated she was ready to proceed. On September 10, 2016, the case was assigned to another administrative judge, and on October 21, 2016, the case was assigned to me. On September 26, 2016, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for October 21, 2016. (HE 1) The hearing was held as scheduled.

Department Counsel offered 3 exhibits; Applicant offered 20 exhibits; and all proffered exhibits were admitted. (Tr. 34-42; GE 1-3; Applicant Exhibits (AE) A-T) Applicant objected to admissibility of his December 19, 2014 SCA, asserting it lacked relevance and contained unalleged derogatory information about his arrest for violation of a protection order. (Tr. 35-38; GE 1) I overruled the objection because the information in the SCA is relevant under the whole-person concept. Department Counsel did not object to the admissibility of Applicant's exhibits. (Tr. 41; AE A-T) On October 28, 2016, DOHA received the transcript of the hearing. Two exhibits were received after the hearing, and they were admitted without objection. (AE U; AE V) The record closed on November 1, 2016. (Tr. 114)

### **Findings of Fact<sup>1</sup>**

In Applicant's SOR response, he admitted the allegations in SOR ¶¶ 1.a through 1.c. (HE 3) I granted Applicant's motion to amend his answer to SOR ¶ 1.c to partially admit and partially deny the allegations in SOR ¶ 1.c. (Tr. 123) He also provided extenuating and mitigating information. Applicant's admissions are accepted as findings of fact.

Applicant is 52 years old, and a government contractor employs him in a construction-related specialty in Afghanistan. (Tr. 107; GE 1) In 1984, Applicant graduated from high school, and he has not attended college. (Tr. 107) He has never served in the U.S. Armed Forces. (Tr. 107) In 1990, he married; and in 2010, he was divorced. (Tr. 6-7; GE 1) Appellant's children are ages 16, 21, 24, and 25 years old. (Tr. 106; GE 1) Applicant has been serving in Afghanistan since 2012. (Tr. 104) He had some brief breaks or leaves where he returned to the United States. He returned to Afghanistan shortly after his hearing. He is stationed on a large base, and the primary danger is indirect fire usually from rockets. (Tr. 108)

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<sup>1</sup>Some details have been excluded in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

## **Financial Considerations**

Applicant's financial problems were caused by a work-related injury in 1989, inability to work for several years, separation, divorce, and decline in the real estate market. (AE C; AE D) In 2012, he was deployed to Afghanistan, and he has earned a good salary while deployed in Afghanistan. He used the additional income to pay his debts and save money for any emergency that should arise in the future.

## **Foreclosure**

In August 2009, Applicant received notice that he was restrained from entering his residence because of disputes with his spouse. (Tr. 99; AE D, Ex. 1) In October 2009, he received notice of a pending foreclosure on his residence. (Tr. 99) Applicant gave a check for \$1,360 to his adult daughter to give to his spouse to pay the mortgage, and she informed the police that he had violated the restraining order. (Tr. 100; AE D, Ex. 2) In November 2009, the divorce court judge ordered that the marital home be sold. (AE D, Ex. 4) In May 2010, the home was sold, and the mortgage company recorded a release of mortgage. (AE D, Ex. 6) On June 8, 2010, the mortgage company wrote Applicant that the mortgage loan was paid in full. (AE D, Ex. 7) The foreclosure was removed from Applicant's credit reports at Applicant's request. (AE D; Ex. 8)

## **Filing Tax Returns for Tax Years 2009, 2010, 2011, and 2012**

Because of the August 2009 restraining order barring him from access to the records stored in his home, Applicant was unable to timely file a 2009 tax return. (Tr. 49) In 2009, Applicant's spouse filed separately; she took all of the mortgage deductions; and she put his social security number on her tax return. (Tr. 49; AE A; AE B)<sup>2</sup> In 2009, Applicant did not have any income;<sup>3</sup> he contacted the Internal Revenue Service (IRS); and the IRS informed him he was credited him with filing his 2009 income tax return. (Tr. 49-51)

In 2010, Applicant's income was less than \$100, and he believed he did not need to file a federal income tax return.<sup>4</sup> (AE A; AE B) In March 2011, someone filed a false tax return in Applicant's name, and received a \$6,334 refund. (Tr. 54) Applicant did not receive the refund, and he was unaware of the fraudulent tax return until June or July 2016. (Tr. 54-56) In September 2016, Applicant filed a corrected tax return for 2010. (Tr. 55; AE A) In September 2016, Applicant filed an Identity Theft Affidavit, IRS Form 14039, with the IRS. (AE A) The identity theft is under IRS investigation. (Tr. 55)

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<sup>2</sup>Applicant thought her inclusion of his social security number on her tax return meant his tax return was filed; however, his spouse was required to place his social security number on her tax return to file a married filing separate tax return. See IRS Publication for 2009 Form 1040 at 15, <https://www.irs.gov/pub/irs-prior/i1040--2009.pdf>.

<sup>3</sup>The income threshold to require filing a tax return in 2009 for married filing separately was \$3,650. See IRS Publication for 2009 Form 1040 Chart A at 8, <https://www.irs.gov/pub/irs-prior/i1040--2009.pdf>.

<sup>4</sup>The income threshold to require filing a tax return in 2010 for married filing separately was \$3,650. See IRS Publication 17 for 2010 Form 1040 at 4, <https://www.irs.gov/pub/irs-prior/p17--2010.pdf>.

Applicant has mitigated the allegations that he failed to timely file his federal income tax returns for tax year 2009 and 2010 because he had no income during those two tax years. (Tr. 50-52, 123; AE A; AE B) See notes 3, 4, *supra*. Because of his divorce litigation expenses, he was unable to afford tax help. (Tr. 69-70)

In 2011, Applicant obtained employment. (Tr. 57) In April 2012, he hired his cousin, who operated a tax return preparation business, to help him with his taxes. (Tr. 65; AE B) In 2012, he applied for the automatic six-month extension. (Tr. 59) He had some difficulty communicating with the IRS because he had a power of attorney, and the IRS did not want to discuss his tax return with him. (Tr. 60) In July 2012, he deployed to Afghanistan. (December 19, 2014 SCA at 9) In June or July 2016, he discovered that he had not filed his federal tax return for tax 2011. (Tr. 57) He obtained W-2s, and his 2011 federal income tax return was filed in July 2016. (Tr. 57) His 2011 federal income tax return shows: adjusted gross income of \$28,289; tax of \$3,193; withholding of \$2,963; and amount owed of \$230. (AE B, Ex. 4) He also sent the IRS a check for \$230 in July 2016. (AE B)

Applicant's 2012 tax return was filed in 2013, and in October 2013, the IRS rejected his return because it had already been filed. (Tr. 59-60; AE B) In October 2013, after his 2012 tax return was rejected by the IRS, Applicant gave a power of attorney to his tax accountant to get his tax return filed. (Tr. 67; AE B, Ex. 7, Ex. 8) He instructed his tax attorney to straighten out and file his tax returns and to file all necessary documentation on his behalf. (Tr. 67-69) In November 2013, his 2012 federal income tax return was filed. (Tr. 62; AE B)

Applicant's 2013, 2014, and 2015 federal income tax returns were timely filed and paid using the same accountant that was supposed to take care of his taxes in 2012. (Tr. 70, 104-107, 110; AE P; AE Q; AE T)<sup>5</sup>

### **Combat Zone IRS Filing Extensions**

The federal income tax return filing deadline for Appellant while he is serving in Afghanistan is as follows:

[His filing deadline] is extended for 180 days after the later of the following.  
1. The last day [he was] in a combat zone . . . [and] Second, in addition to the 180 days, [his] deadline is extended by the number of days that were left for [him] to take the action with the IRS when [he] entered a combat zone. . . . If [he] entered the combat zone . . . his deadline is extended by the entire period of time [he] would have to take the action. For example, [if he] had 3 1/2 months (January 1– April 18, 2016) to file [his] 2015 tax return. Any days of this 3 1/2 month period that were left when [he] entered the combat zone (or the entire 3 1/2 months if [he] entered the combat zone by

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<sup>5</sup>The SOR does not allege that Applicant failed to timely file his federal income tax returns in 2013, 2014, and 2015.

January 1, 2016) are added to the 180 days when determining the last day allowed for filing [his] 2015 tax return.

**Example 1.** Captain Margaret Jones, a resident of Maryland, entered Saudi Arabia on December 1, 2014. She remained there through March 31, 2016, when she departed for the United States. She was not injured and did not return to the combat zone. The deadlines for filing Captain Jones' 2014, [returns is] figured as follows.

**The 2014 tax return.** The deadline is January 10, 2017. This deadline is 285 days (180 plus 105) after Captain Jones' last day in the combat zone (March 31, 2016). The 105 additional days are the number of days in the 3 1/2 month filing period that were left when she entered the combat zone (January 1– April 15, 2015).<sup>6</sup>

These extensions apply to civilians acting under the directions of U.S. Armed Forces in a combat zone.<sup>7</sup> This same combat zone extension rule was in effect in 2012, when 2011 federal income tax returns were supposed to be filed.<sup>8</sup>

Applicant credit reports from TransUnion, Equifax, and Experian for 2016 document numerous paid as agreed accounts. (AE F; AE G; AE J) Applicant has earned from \$128,000 to \$137,000 annually for the last three years serving in Afghanistan. (AE O; AE P; AE Q; AE T) He has a remainder of about \$7,000 each month. (Tr. 71, 92) He has \$97,000 in his bank account. (Tr. 72-73) His income has been stable since 2013. (Tr. 92; AE O) It is evident from Applicant's overall statement that he is not sophisticated about taxes and financial issues. He relied on others to help him navigate the tax system. He did not receive financial counseling.

## **Social Security Administration (SSA) Debt**

In 1989, Applicant was injured while working on a large construction project. (Tr. 52, 86) Some wet concrete struck him and injured his back. (Tr. 108) He sought and received SSA disability payments beginning in 1992. (Tr. 86) His spouse was designated at the representative payee. (Tr. 81) Applicant wanted her to handle their finances. (Tr. 81) In 1995 or 1996, he returned to work, and then he entered into a five-year construction apprenticeship. (Tr. 53, 87) His spouse informed the SSA that he had returned to the work force. (Tr. 89) The SSA would not communicate with Applicant because his spouse was the representative payee. (Tr. 89) His spouse went to the SSA office; she advised the

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<sup>6</sup>See IRS Publication 3, Armed Forces Tax Guide, at page 29 (2016), <https://www.irs.gov/pub/irs-pdf/p3.pdf>. (HE 4)

<sup>7</sup>See IRS Publication 3, Armed Forces Tax Guide, at page 28 (2016), <https://www.irs.gov/pub/irs-pdf/p3.pdf>. (HE 4). See also IRS Extension of Deadlines—Combat Zone Service, Question and Answer 16, <https://www.irs.gov/individuals/military/extension-of-deadlines-combat-zone-service>. (HE 5)

<sup>8</sup>See IRS Publication 3, Armed Forces Tax Guide, at page 24 (2013), <https://taxmap.ntis.gov/taxmap/archive2013/taxmap/pubs/p3-010.htm>. (HE 6)

SSA that he was employed; and the payments should stop. (Tr. 91) His SSA payments continued until 2007, when his SSA payments finally ended. (Tr. 53) The SSA payments were used for living expenses. (Tr. 91) He thought the SSA was making the payments for a valid reason that he did not understand. (Tr. 92) Once Applicant began working overseas, the SSA determined he could afford to pay the entire amount, including his former spouse's share. (Tr. 83)

SSA's initial decision on Applicant's request for waiver was on April 29, 2009. (AE C, Ex. 8) The SSA litigation, including appeals, reconsiderations, vacated decisions, remands, and additional decisions continues to date. (AE C, Ex. 8)<sup>9</sup>

In 2011, Applicant's spouse paid the SSA \$6,334 when the IRS intercepted her federal income tax refund. (Tr. 63-64)<sup>10</sup> Applicant was making token payments to SSA. (Tr. 77, 93) When he was deployed to Afghanistan his mail was not being forwarded to him. He was not receiving the SSA coupons and was unable to make payments. (Tr. 77, 93) In June 2013, the SSA began garnishing 15 percent of Applicant's gross pay. (Tr. 76) In February 2015, the SSA administrative law judge (ALJ) found that Applicant was without fault in his receipt of the SSA funds; however, the amount owed for May 1999 to March 2007 at that time was \$118,898. (Tr. 85, 90; AE C, Ex. 8) As of February 2015, the amount owed the SSA was \$90,977. (Tr. 77, 80, 84) The SSA ALJ found "recovery does not defeat the purpose of the [Social Security] Act, and [recovery from Applicant] is not against equity and good conscience within the regulatory definition. Therefore, recovery of the overpayment is not waived." (AE C, Ex. 8 at 2) The rationale for requiring repayment is explained in the SSA Manual. See note 9, *supra*.

In June 2016, Applicant contacted SSA because he wanted to settle the debt, and in August 2016, the SSA offered to settle his \$64,000 debt for \$52,000. (Tr. 74, 96-97; AE C, Ex. 9) At the time of the settlement, there was some confusion at the SSA about the amount owed and previously paid to the SSA. (Tr. 75; AE C) In October 2016, Applicant sent the settlement amount from Afghanistan. (Tr. 75, 78, 96; AE C, Ex. 19, 20) He is expecting to receive a refund of \$5,900 when the amount is recalculated. (Tr. 75, 98) An attorney advised Applicant that he could avoid payment of the SSA debt through bankruptcy; however, Applicant preferred to pay the debt and not have a bankruptcy on his record. (Tr. 79-80; AE C, Ex. 15) Applicant still has the possibility of receiving a refund from the SSA Appeals Council on a pending appeal. (Tr. 79, 85-86)

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<sup>9</sup>The Social Security Handbook explains the standards for requiring repayment of SSA overpayments. Social Security Handbook, Section 1914.4 states, "What happens when SSA receives a request for waiver? When we receive a request for waiver, all recovery actions stop until your request is either approved or denied and, you had the opportunity for a personal conference." [https://www.ssa.gov/OP\\_Home/handbook/handbook.19/handbook-1914.html](https://www.ssa.gov/OP_Home/handbook/handbook.19/handbook-1914.html).

<sup>10</sup>The judge handling the divorce allocated responsibility for paying half of the SSA debt to Applicant's former spouse and the other half to Applicant. (Tr. 111-112) If one party pays more than half, they have a right to return to divorce court to seek a remedy from their former spouse. (Tr. 112)

## Character Evidence

Two civilians, an Army captain, and a retired Army sergeant major served with Applicant in Afghanistan for up to three years. (AE E) They recommended approval of Applicant's security clearance. (AE E) The general sense of their statements is that Applicant is diligent, "superbly productive," technically proficient, professional, loyal, dedicated, reliable, and responsible. (AE E)

## 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." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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 about potential, rather than actual, risk of compromise of classified information. 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." See Exec. Or. 10865 § 7. Thus, nothing should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "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). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

### **Financial Considerations**

AG ¶ 18 articulates the security concern relating to financial problems:

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's history of delinquent debt is documented in his credit reports, SOR response, and hearing record. AG ¶ 19 provides three disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability or unwillingness to satisfy debts;" "(c) a history of not meeting financial obligations;" and "(g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same."

Based on the information in the exhibits and transcripts, AG ¶¶ 19(a) and 19(c) are established requiring additional inquiry about the possible applicability of mitigating conditions in regard to his SSA debt. His mortgage debt was mitigated when the mortgage creditor wrote the debt was paid in full.

Applicant filed his federal tax returns for tax years 2011 and 2012 after April 15, 2012 and April 15, 2013, respectively, and his responsibility for the timely timing of his tax returns for tax years 2011 and 2012 is shared with his accountant and tax attorney. His tax professionals had a power of attorney to take reasonable actions to get his returns filed while Applicant was deployed to Afghanistan. He was the victim of identity theft, which delayed the IRS acceptance of his tax returns. All tax returns are filed, and all debts are paid or current.

Most importantly, AG ¶ 19(g) is not established because Applicant has timely filed his federal tax returns. He served in a combat zone from 2012 to present with several brief breaks or leaves to the United States, and he received an automatic 180-day extension each time he returned to the combat zone, which continues until he returns from the combat zone for at least 180 days.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

(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;

(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;

(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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;<sup>11</sup> and

(e) 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.

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<sup>11</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) 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)).

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

The following circumstances beyond his control adversely affected his finances: injury in 1989; unemployment; medical bills; underemployment; divorce; and the decline of the real estate market. Applicant's SOR alleges an unpaid SSA debt for \$93,372. After he exhausted most of his SSA appeals, he settled and paid the SSA debt. He paid his former spouse's portion of the SSA debt, and he has a right to seek repayment from her from the divorce court. He has a pending appeal of his SSA debt. He does not have any delinquent debt.

I have not applied a piecemeal analysis of Applicant's finances and have reviewed his financial history including the SSA decision pertaining to his SSA overpayment. Throughout the litigation he has acted in good faith. He is acted in good faith when he requested and sought relief through the SSA appellate process before paying the SSA debt. See ISCR Case No. 15-01031 at 3 and note 3 (App. Bd. June 15, 2016) (characterizing "no harm, no foul" approach to an Applicant's course of conduct and employed an "all's well that ends well" analysis as inadequate to support approval of access to classified information with focus on timing of filing of tax returns after receipt of the SOR). Applicant's explanations fully mitigate financial considerations security concerns.

### **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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under Guideline F, but some warrant additional comment.

Applicant is 52 years old, and a government contractor employs him in a construction-related specialty in Afghanistan. He has not attended college. In 1990, he married; and in 2010, he was divorced. Applicant has been serving in Afghanistan since 2012 with short breaks for leave in the United States. He returned to Afghanistan shortly after his hearing. He is stationed on a large base, and the primary danger is indirect fire usually from rockets. Applicant has risked his life as part of his duties on behalf of the U.S. combat forces in Afghanistan. These circumstances increase the probability that Applicant will recognize, resist, and report any attempts by a foreign power, terrorist group, or insurgent group to coerce or exploit him. See ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008). His over four years of past honorable service as a contractor in Afghanistan, and his desire for continued employment in Afghanistan weigh heavily towards approval of his security clearance.

Two civilians, an Army captain, and a retired Army sergeant major recommended approval of Applicant's security clearance. The general sense of their statements is that Applicant is diligent, "superbly productive," technically proficient, professional, loyal, dedicated, reliable, and responsible.

Circumstances beyond Applicant's control adversely affected his finances including: his injury in 1989; unemployment; medical bills; underemployment; divorce; and the decline of the real estate market. Applicant's SSA debt for \$93,372 was settled and paid even though not all SSA appeals are resolved, and his former spouse has primary responsibility for half of the SSA debt. He timely filed all federal income tax returns, and all federal income taxes are paid.

Applicant's credit reports show numerous entries of pays as agreed. He acted responsibly by resolving all of his delinquent SOR debts. He assures he intends to pay his debts, and he understands the conduct required to retain his security clearance. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

. . . 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 has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate 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 his 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.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted). Applicant has established a "meaningful track record" of debt re-payment, and I am confident he will maintain his financial responsibility.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. Financial considerations concerns are mitigated.

### **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 through 1.c:	For Applicant
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### **Conclusion**

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

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MARK HARVEY  
Administrative Judge