



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-05364

**Appearances**

For Government: Caroline E. Heintzelman, Esq., Department Counsel  
For Applicant: *Pro se*

11/02/2017

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**Decision**

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HARVEY, Mark, Administrative Judge:

Applicant provided sufficient evidence of progress towards resolution of his financial issues. Circumstances beyond his control harmed his finances. In the past three years, Applicant paid over \$100,000 to address the debts on his statement of reasons (SOR). All SOR debts are resolved. Financial considerations security concerns are mitigated. Eligibility for access to classified information is granted.

**Statement of the Case**

On July 16, 2014, Applicant signed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). Government Exhibit (GE) 1. On October 15, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under 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*, effective on September 1, 2006. Hearing Exhibit (HE) 2. The SOR set forth security concerns arising under the financial considerations guideline. HE 2.

On December 1, 2016, Applicant provided a response to the SOR, and he requested a hearing. HE 3. On December 13, 2016, Department Counsel was ready to

proceed. On July 5, 2017, the case was assigned to me. On July 5, 2017, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for July 11, 2017. HE 1. Applicant had 15 days of informal notice of the hearing. Transcript (Tr.) 14-15. Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered seven exhibits; Applicant offered nine exhibits; there were no objections; and all proffered exhibits were admitted into evidence. Tr. 18-23; GE 1-7; Applicant Exhibits (AE) A-I. On July 19, 2017, DOHA received a copy of the hearing transcript. On October 11, 2017, Applicant provided five exhibits, which were admitted without objection. AE J-AE N. The record closed on October 11, 2017. Tr. 64-65.

The Director of National Intelligence (DNI) issued Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), which he made applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position on or after June 8, 2017. The new AGs supersede the previous AGs. Accordingly, I have evaluated Applicant's security clearance eligibility under the new AGs.<sup>1</sup>

### **Findings of Fact<sup>2</sup>**

In Applicant's SOR response, he denied all of the SOR allegations. HE 3. He also provided extenuating and mitigating information. HE 3.

Applicant is 58 years old, and he is employed as a system engineer and consultant for a government contractor. Tr. 7, 9-10. In 1981, he received a General Equivalency Diploma (GED). Tr. 7. He has 186 college credits from various institutions; however, he has not received a degree. Tr. 8-9. He served in the Air Force and Air National Guard from 1981 to 2001, and he was honorably discharged as a master sergeant (E-7). Tr. 7-8. He was deployed to Southwest Asia for Desert Shield/Desert Storm. Tr. 52. He did not qualify for retirement because he did not have sufficient points for three years to count towards retirement. Tr. 8. He was married from 1979 to 2006, and his children are ages 31 and 36. Tr. 8, 29-30. He was deployed to Iraq for two years from 2007 to 2009. Tr. 52-53. He was deployed to Afghanistan for nine months. Tr. 53. There is no evidence of security violations, abuse of alcohol, or use of illegal drugs.

### **Financial Considerations**

In 2006, Applicant was divorced, and he had to pay \$1,500 monthly to his former spouse. Tr. 49. He accepted financial responsibility for his spouse's tax debt. He was required to pay his children's student loan debts. Tr. 49. In 2014, Applicant received

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<sup>1</sup> Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case. The new AGs are available at [http://ogc.osd.mil/doha/SEAD4\\_20170608.pdf](http://ogc.osd.mil/doha/SEAD4_20170608.pdf).

<sup>2</sup> Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

financial counseling. Tr. 50; SOR response, Ex. M. He liquidated his 401(k) account in 2006, when he was divorced. Tr. 25. His daughter required expensive treatment for her drug addiction. Tr. 25, 30, 54. He had rental homes that declined in value during the real estate crisis in 2008. Tr. 54-55. He was unemployed for about two months last year. Tr. 27. He has about \$10,000 in his bank accounts. Tr. 27. One of Applicant's residences or rental properties was transferred through a short sale. Tr. 31-32. He received an IRS Form 1099-C for about \$50,000 for tax year 2011, and he owed a tax debt for that tax year. Tr. 32-33. His gross salary in 2016 was \$156,000. Tr. 24. For several years, he was self-employed as a consultant, and he was responsible for additional taxes, including his employer's share of social security taxes. Tr. 51.

The SOR alleges and record establishes the status of Applicant's accounts as follows:

SOR ¶ 1.a alleges a charged-off bank debt for \$121,646. On November 6, 2016, the creditor wrote that Applicant had made 29 payments of \$810 for a total of \$23,490, and he had seven \$810 payments remaining for a total of \$5,670. SOR response, Ex. B. On July 7, 2017, the creditor wrote the debt was "settled in full" on June 20, 2017. Tr. 33-34; AE E.

SOR ¶ 1.b alleges a charged-off bank debt for \$38,581. On June 29, 2015, Applicant retained a law firm to assist in the settlement of the debt. Tr. 57-58; SOR response, Ex. D. Applicant paid \$14,673 to the creditor. Tr. 35-38; SOR response at 5. He made some payments through garnishment; and then the creditor agreed to stop the garnishment in November 2015. Tr. 36-38. In 2015, Applicant offered to settle the debt for \$10,000, and the creditor could retain the payments made to date. Tr. 40. He has \$10,000 available to settle the debt, and he said he would pay the debt once a settlement agreement is established. Tr. 58, 61. On October 11, 2017, the creditor advised him that the creditor had decided to release him of his obligation to pay the remaining debt. AE J. He is waiting for the IRS Form 1099-C showing his tax responsibility for the portion of the debt that was discharged. AE J. The debt was removed from his current credit report. AE J; AE K.

SOR ¶ 1.c alleges a tax lien entered against Applicant in 2013 for \$59,516. The lien was \$39,295 for tax year 2007 and \$20,221 for tax year 2008. AE M. On November 10, 2016, Applicant and the IRS agreed on an installment payment plan in which Applicant agreed to pay \$414 monthly until resolution of his \$5,862 tax debt for tax year 2007, and \$21,114 tax debt for tax year 2008. SOR response, Ex. H

On February 25, 2011, while Applicant was deployed to Iraq, the Internal Revenue Service (IRS) filed his tax returns for tax years 2007 and 2008. Tr. 41-42; AE B; AE C. Applicant believed his tax returns for those two years were already filed. For Applicant's tax debt for the 2007 tax year, he made the following payments: August 28, 2014 (\$1,380 and \$120); October 2, 2014 (\$1,350); credit from 2011 tax return (\$625); credit from 2014 tax return (\$9,252); credit from 2015 tax return (\$26,963); January 23, 2017 (\$414); February 21, 2017 (\$414); and credit from 2016 tax return (\$5,125). AE B. On March 13, 2017, the IRS concluded the balance owed was zero. AE B.

For Applicant's tax debt for the 2008 tax year, he made the following payments: March 2, 2015 (\$1,500); June 2, 2015 (\$950); July 1, 2015 (\$950); November 16, 2016 (\$950); December 11, 2015 (\$925); credit from 2016 tax return (\$18,888); February 21, 2017 (\$414); March 20, 2017 (\$414); April 20, 2017 (\$414); May 22, 2017 (\$414); and June 20, 2017 (\$414). AE C. On July 6, 2017, Applicant made his final payment of \$769, and the balance owed is zero. Tr. 45, 56; AE C; AE D.

Applicant had tax problems in part because he erroneously thought all of his income received while deployed overseas was tax free, and actually, \$96,000 was tax free. Tr. 44. All of his taxes are now paid. Tr. 44-47; AE C.

SOR ¶ 1.d alleges a medical debt placed for collection for \$59. On March 5, 2015, the creditor acknowledged Applicant's medical debt was paid. SOR response, Ex. I.

SOR ¶ 1.e alleges a debt owed to a city placed for collection for \$65. On November 15, 2016, the city acknowledged Applicant's parking ticket was paid. SOR response, Ex. J.

SOR ¶ 1.f alleges a utility debt placed for collection for \$124. On November 21, 2016, Applicant paid the debt for \$127. SOR response, Ex. L.

Applicant's October 11, 2017 combined credit report shows scores of 731 and 741 (very good) and 680 (good). AE K. His October 11, 2017 Equifax credit report shows 23 accounts in "pays as agreed" status, and two accounts as "lost or stolen card" both with a zero balance. AE N. There are no negative entries on his October 11, 2017 Equifax credit report. AE N.

## **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 in this decision should be construed to suggest that it is based, 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, Secretary of Defense, and DNI 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 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. Sept. 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 for financial problems:

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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

AG ¶ 19 includes four disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts"; "(b) unwillingness to satisfy debts regardless of the ability to do so"; "(c) a history of not meeting financial obligations"; and "(f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required." In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). The record establishes the disqualifying conditions in AG ¶¶ 19(a), 19(b), 19(c), and 19(f) requiring additional inquiry about the possible applicability of mitigating conditions.

Five financial considerations mitigating conditions under AG ¶ 20 are potentially applicable in this case:

- (a) the behavior happened so long ago,<sup>3</sup> 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

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<sup>3</sup> A debt that became delinquent several years ago is still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)).

(c) 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;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;<sup>4</sup>

(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;

(f) the affluence resulted from a legal source of income; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

The DOHA 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).

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<sup>4</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)).

Applicant's credit reports indicate that one of his debts was in charged-off status. Eventually the charged-off debt will be dropped from his credit report. "[T]hat some debts have dropped off his credit report is not meaningful evidence of debt resolution." ISCR Case No. 14-05803 at 3 (App. Bd. July 7, 2016) (citing ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015)). The Fair Credit Reporting Act requires removal of most negative financial items from a credit report seven years from the first date of delinquency or the debt becoming collection barred because of a state statute of limitations, whichever is longer.<sup>5</sup> Debts may be dropped from a credit report upon dispute when creditors believe the debt is not going to be paid, a creditor fails to timely respond to a credit reporting company's request for information, or when the debt has been charged off.

Divorce, the real estate downturn, and his daughter's medical problems were circumstances beyond his control that adversely affected his finances. He received financial counseling. In the last three years, Applicant paid more than \$100,000 to his SOR creditors, and he has settled and resolved all of the SOR debts. AG ¶ 20(a) through 20(d) apply. AG ¶ 20(g) applies to his federal income tax debt because he had an installment plan with the IRS, and he complied with that agreement.

Based on Applicant's track record of paying or resolving his debts, future new delinquent debt "is unlikely to recur and does not cast doubt on [Applicant's] current reliability, trustworthiness, or good judgment," and "there are clear indications that the problem is being resolved or is under control." His payments to address his debts showed good faith. He has sufficient income to keep his debts in current status and to continue making progress paying his remaining debts. Applicant assures he will conscientiously endeavor to maintain his financial responsibility. His efforts are sufficient to 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(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.

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<sup>5</sup>Title 15 U.S.C. § 1681c. See Federal Trade Commission website, Summary of Fair Credit Reporting Act Updates at Section 605, <https://www.consumer.ftc.gov/articles/pdf-0111-fair-credit-reporting-act.pdf>.



Under AG ¶ 2(c), “[t]he 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. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is 58 years old, and he is employed as a system engineer and consultant for a government contractor. He has 186 college credits from various institutions; however, he has not received a degree. He served in the Air Force and Air National Guard from 1981 to 2001, and he was honorably discharged as a master sergeant. He was deployed to Southwest Asia for Desert Shield/Desert Storm. He was married from 1979 to 2006, and his children are ages 31 and 36. He was deployed to Iraq and Afghanistan for a total of about three years. There is no evidence of security violations, abuse of alcohol, or use of illegal drugs.

Divorce, unemployment, the real estate downturn, and his daughter’s medical problems were circumstances beyond his control that adversely affected his finances. He received financial counseling. In the last three years, Applicant paid more than \$100,000, and he has settled and resolved all of the SOR debts. His October 11, 2017 Equifax credit report shows 23 accounts in “pays as agreed” status, and there are no negative entries on this credit report. 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). He understands what he needs to do to establish and maintain his financial responsibility. He took reasonable actions under his particular financial circumstances to address his delinquent debts. Applicant has established a “meaningful

track record” of debt re-payment, and he assures he will maintain his financial responsibility.<sup>6</sup>

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. I conclude that financial considerations security concerns are mitigated. It is clearly consistent with the interests of national security 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 through 1.f:	For Applicant
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### **Conclusion**

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

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Mark Harvey  
Administrative Judge

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<sup>6</sup> Failure to maintain financial responsibility in the future may raise a security concern. The Government has the option of following-up with more questions about Applicant’s finances. The Government can re-validate Applicant’s financial status at any time through credit reports, investigation, and interrogatories. Approval of a clearance now does not bar the Government from subsequently revoking it, if warranted. “The Government has the right to reconsider the security significance of past conduct or circumstances in light of more recent conduct having negative security significance.” ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012). An administrative judge does not have “authority to grant an interim, conditional, or probationary clearance.” ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012) (citing ISCR Case No. 10-03646 at 2 (App. Bd. Dec. 28, 2011)). See *a/so* ISCR Case No. 04-03907 at 2 (App. Bd. Sep. 18, 2006) (stating, “The Board has no authority to grant [a]pplicant a conditional or probationary security clearance to allow her the opportunity to have a security clearance while she works on her financial problems.”). This footnote does not imply that granting Applicant’s security clearance is conditional.