DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 15-08178
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

11/21/2017

Decision

HARVEY, Mark, Administrative Judge:

Applicant provided sufficient evidence of progress towards resolution of his financial issues. All of Applicant's debts are current except for one debt for $25,070 for solar panels. He disputed the amount of the debt. His dispute is reasonable and made in good faith. Financial considerations security concerns are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

On March 12, 2015, Applicant completed and signed his Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). Government Exhibit (GE) 1. On June 25, 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 (Sept. 1, 2006 AGs). Hearing Exhibit (HE) 2. The SOR set forth security concerns arising under the financial considerations guideline.

On August 5, 2016, Applicant responded to the SOR, and on September 23, 2017, he requested a hearing. Tr. 15; HE 3. On September 30, 2016, Department Counsel was ready to proceed. On April 24, 2017, the case was assigned to me. On May 10, 2017, the

Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for June 15, 2017. HE 1. Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered four exhibits; Applicant offered five exhibits; there were no objections; and all proffered exhibits were admitted into evidence. Transcript (Tr.) 17-22; GE 1-4; Applicant Exhibits (AE) A-E. On June 26, 2017, DOHA received a copy of the hearing transcript. On October 27, 2017, I received two exhibits, which were admitted into evidence without objection. AE F-AE G. On November 16, 2017, I received an email from Applicant, and it was admitted without objection. AE H.

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.[1]

Findings of Fact[2]

In Applicant's SOR response, he denied responsibility for the debt in SOR ¶ 1.a, and he provided extenuating and mitigating information. HE 3. Applicant's admissions are accepted as findings of fact. Additional findings of fact follow.

Applicant is 64 years old, and a DOD contractor has employed him as an engineer for 33 years. Tr. 7, 9. He served on active duty in the Air Force from 1972 to 1976; he left active duty as a staff sergeant (E-5); and he received an honorable discharge. Tr. 8-9. In 1972, Applicant graduated from high school, and in 2007, he received a bachelor's degree in business administration. Tr. 7. In 2009, he married, and he does not have any children. Tr. 9.

Financial Considerations

Applicant's SOR alleges one delinquent debt. SOR ¶ 1.a is a charged-off debt[3] for $25,070. A solar power company (SPC) salesman made an oral and written agreement

[1] 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.

[2] Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

[3] Applicant's credit reports indicate that his SOR debt is in a 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. Title 15

with Applicant. The SOL salesman orally promised a price of $16,000, with a $1,000 down payment and $15,000 financed at five percent interest, no payments for two years, and a $160 monthly payment after the two-year period expired. Tr. 28-29, 55-56, 60-61. The installation of solar panels on his home was supposed to be to Applicant's satisfaction. Tr. 28-29. During Appellant's discussion with the SPC sales agent, the sales agent said he called his boss, and his boss at SPC agreed to the five percent interest rate. Tr. 46, 56. Applicant signed an initial agreement and provided the $1,000 down payment in three payments; however, SPC was supposed to provide additional documentation supporting their oral agreement including the five percent interest rate. Tr. 30, 40-41, 44-45, 56, 60-61, 64. The agreement Applicant signed was handwritten on notebook paper. Tr. 65. Applicant insisted the handwritten contract he signed did not indicate the cost or terms of payment. Tr. 43. The salesman took the handwritten agreement with him, and Applicant did not receive a copy of this contract. Tr. 47.

When the installers arrived in the fall of 2013, Applicant asked for the addendum to the contract or the revised contract with the five percent interest rate and price; however, it was not provided. Tr. 41, 45. Applicant asked the installers to leave his residence; however, they continued their installation. Tr. 42. Applicant did not call the police or take other legal action to remove the installers from his property. The solar panels were installed without completion of the contract addendum addressing the interest rate and other oral terms. Tr. 28-29. Applicant was not satisfied with the installation, and when he asked to speak to his SPC salesman, SPC said Applicant's salesman no longer was employed with SPC. Tr. 29, 47-48. The solar panels do not produce the promised amount of electricity. Tr. 43. SPC denied that SPC promised a five percent interest rate. Tr. 48. There was supposed to be a 10-year warranty, and SPC has not been willing to discuss working on their solar panels. Tr. 43. SPC said SPC could not find their copy of the contract. Tr. 58.

The only payments Applicant made were the three payments totaling $1,000, which was his down payment, and SPC sold his loan to a collection agent (CA). Tr. 28-30, 44, 55-56, 60-61. Applicant decided not to pay the loan because he had not signed an acceptance of the installation of the solar panels, and he wanted the five percent interest rate. Tr. 30-31. CA wanted 22 percent interest and $500 monthly payments. Tr. 47, 49, 61. On more than one occasion, Applicant asked CA to provide documentation showing CA's entitlement to seek collection of the loan, and CA did not provide the requested information. Tr. 32-33. Applicant went to SPC's office and asked them to remove their solar panels from his home. Tr. 32, 33. The original debt was about $16,000, and the interest and penalties have increased the alleged debt to over $25,000. Tr. 33. CA has a bad business reputation. Tr. 33-34; AE E. He did not want to settle the debt with

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. Debts may be dropped from a credit report upon dispute when a creditor believes 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. Simply providing evidence such as a credit report showing that a debt has been charged off does not mitigate a debt. More evidence of inability to pay or debt resolution is necessary to establish mitigation of a charged-off debt.

CA, and then learn a different entity owned the debt. Tr. 34. Applicant discussed settlement of the debt, and he has the funds available to settle the debt. Tr. 34, 59.

The only correspondence of record to or from SPC or CA, is a July 31, 2017 letter to CA. AE F. Citing the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. 1692g Sec. 809(b), the letter notified CA that the debt is disputed and asks for specific information about the basis for and validation of the debt. Although the FDCPA specifies that the collection agent must provide verification or the address of the original creditor upon request, the FDCPA does not require a specific type of verification.[4] Presumably, after CA provides the address of SPC (the original creditor), Appellant would then write SPC asking for verification of the debt. Some of the information Applicant's letter seeks, such as proof the statute of limitations has not elapsed and state licensing requirements, are not required by the FDCPA. Applicant's believes the four-year state statute of limitations

[4] The Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692g

§ 809. Validation of debts

(a) Notice of debt; contents--Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing --

(1) the amount of the debt;

(2) the name of the creditor to whom the debt is owed;

(3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;

(4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and

(5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

(b) Disputed debts--If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) of this section that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and **a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector**. Collection activities and communications that do not otherwise violate this subchapter may continue during the 30-day period referred to in subsection (a) unless the consumer has notified the debt collector in writing that the debt, or any portion of the debt, is disputed or that the consumer requests the name and address of the original creditor. Any collection activities and communication during the 30-day period may not overshadow or be inconsistent with the disclosure of the consumer's right to dispute the debt or request the name and address of the original creditor. (emphasis added).

bars collection of the debt to SPC or CA. AE H. He argued that SPC breached the contract in the fall of 2013 more than four years ago, and the statute of limitations began to run when SPC breached the contract.

Applicant's credit report reflects his mortgage is delinquent. GE 4; AE B. Applicant's mortgage creditor reduced the interest rate on his mortgage. Tr. 51. When the account was under revision, the mortgage creditor learned that Applicant's homeowner's insurance and property taxes were not going into an escrow account. Tr. 25, 51. Applicant has been paying his homeowner's insurance directly to the insurance company for 20 years, and he directly pays his property taxes to the state. Tr. 52-53. His mortgage creditor took the insurance and mortgage payments out of his mortgage payment, and then penalized Applicant for not making his full mortgage payment. Tr. 25, 51-53. Applicant's June 6, 2017 credit report reflects a mortgage account with a balance of $451,212, monthly payment of $3,681, and past due for $38,768. AE B. On July 13, 2016, the creditor wrote the account was "currently on active trial," and indicated they were "sorry for any confusion the prior letter [about the account being delinquent] may have caused." Tr. 25-27; AE C. Applicant's home has a market value of $1.4 million, and he has approximately $900,000 equity in his home. Tr. 54, 68-69. The creditor orally promised to provide Applicant with a letter indicating his mortgage account is current. Tr. 55-56.

Applicant's August 30, 2016 credit report lists 20 accounts, and two accounts have past-due balances: the charged-off SPC account; and the delinquent mortgage account. GE 3. Eighteen accounts show "pays account as agreed." GE 3. Applicant's June 6, 2017 credit report lists 17 accounts, and two accounts have past-due balances: the charged-off SPC account; and the delinquent mortgage account. GE 4.

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.

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 two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(b) unwillingness to satisfy debts regardless of the ability to do so"; and "(c) a history of not meeting financial obligations." The record establishes AG ¶¶ 19(b) and 19(c).

AG ¶ 20 contains financial considerations mitigating conditions that are potentially applicable in this case:

> (a) the behavior happened so long ago,[5] 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;
>
> (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;[6] and

[5] 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)).

[6] The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

> (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.

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).

The "Statute of Frauds" requires that any agreement that takes more than a year to complete and sale of goods worth at least $500 be written and signed by all parties in order to be binding and enforceable. *See* Cal. Civ. Code § 1624. The terms in the final written expression of an agreement may not be contradicted by any prior agreement (written or oral). *See* Cal. Civ. Code § 1625. As an exception to the Statute of Frauds, Applicant has admitted there was an oral agreement, and the agreement as Applicant describes it, if completed after the written agreement, can still be enforceable by CA on behalf of SPC.

Moreover, Applicant admits SPC has partially performed the contract by delivering and installing the solar panels. Under state contract law, SPC is entitled to the amount Applicant admitted he agreed to pay for the solar panels. Under the doctrine of promissory estoppel, SPC has incurred costs necessary to fulfill their part of the agreement, and Applicant cannot claim that this agreement is unenforceable under the Statute of Frauds because he was clearly aware of the agreement and allowed SPC to incur costs. SPC offered to install solar panels, and SPC reasonably relied on Applicant's acceptance. SPC

> 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)).

suffered a significant loss. *See also* Cal. Civ. Code § 1589 (stating "A voluntary acceptance of the benefit of a transaction is equivalent to a consent to all the obligations arising from it, so far as the facts are known, or ought to be known, to the person accepting.").

If Applicant and SPC's salesman both incorrectly believed that the five percent interest rate was available, they may have made a mutual material mistake of fact concerning the interest rate, which could entitle Applicant or SPC to rescission of the contract under Cal. Civ. Code § 1577. *See Born v. Castle*, 175 Cal. 680, 167 P. 138 (Cal. Aug. 8, 1917); *Hannah v. Steinman*, 159 Cal. 142, 112 P. 1094 (Cal. Jan. 4, 1911) (both describing rescission of contracts due to mistakes of fact). If the SPC salesman lied to Applicant about the five percent interest rate or any other material term, then the contract could be rescinded due to fraud. The rescission may have already occurred, or the time for rescission due to fraud may have expired due to the statute of limitations.

I accept Applicant's description of events involving the SPC contract as accurate. If SPC committed a material breach of the contract by changing the interest rate from 5 percent to 22 percent, this material breach could constitute grounds for equitable relief, and/or the parties could agree to rescission. If the change of interest rate is an immaterial breach of contract, than Applicant would not be entitled to rescind the contract (tell SPC to retrieve their solar panels). An immaterial breach only gives rise to money damages. *See Integrated, Inc. v. Alec Fergusson Electrical Contractor*, 250 Cal. App. 2d 287 (1967) (stating "[i]f the covenant be of minor importance, not going to the root of the matter, and one that can be readily compensated in damages, the party injured cannot rescind, but must perform his part of the contract and seek compensation in damages.").

In *Sackett v. Spindler*, 248 Cal. App. 2d 220, 229 (1967), the court set forth some factors in determining whether a party's partial breach constitutes material breach:

> Whether a breach of contract is total or partial depends upon its materiality. (Rest., Contracts, § 317, p. 471.) In determining the materiality of a failure to fully perform a promise the following factors are to be considered: (1) The extent to which the injured party will obtain the substantial benefit which he could have reasonably anticipated; (2) the extent to which the injured party may be adequately compensated in damages for lack of complete performance; (3) the extent to which the party failing to perform has already partly performed or made preparations for performance; (4) the greater or less hardship on the party failing to perform in terminating the contract; (5) the willful, negligent, or innocent behavior of the party failing to perform; and (6) the greater or less uncertainty that the party failing to perform will perform the remainder of the contract.

See also Coupons, Inc. v. Stottlemire, 2009 U.S. Dist. LEXIS 35110 at *16-*17 (N. D. Cal 2009) (quoting *Sackett* with approval). In order to rescind the contract, Applicant must:

> promptly upon discovering the facts which entitle him to rescind if he is free from duress, menace, undue influence or disability and is aware of his right

> to rescind: (a) Give notice of rescission to the party as to whom he rescinds; and (b) Restore to the other party everything of value which he has received from him under the contract or offer to restore the same upon condition that the other party do likewise, unless the latter is unable or positively refuses to do so.

Cal. Civ. Code § 1691. It is unclear when Applicant told SPC that the installment of the solar panels was rescinded. He said he told the installers it was rescinded at the time of the installation because he wanted to see the contract with the final terms. The payments were not due for two years, and the probable material breach may not have occurred until demand was made for 22 percent interest rate payments. In any event, Applicant has received a windfall—solar panels after paying only $1,000. As a minimum he needs to offer SPC the opportunity to retrieve their property, or he needs to pay SPC $15,000 plus five percent annual interest.

Applicant's believes the four-year state statute of limitations bars collection of the debt to SPC or CA. AE H. He argues that SPC breached the contract in the fall of 2013 more than four years ago, and the statute of limitations began to run when SPC breached the contract. Applicant incorrectly believes that SPC's violations of the agreement starts the running of the statute of limitations for SPC. The statute of limitations for SPC's remedies begins to run when SPC or CA learned that Applicant breached the contract, which occurred in the fall of 2015 when Applicant missed the first payment to SPC or CA. The four-year state statute of limitations does not bar SPC or CA from collection of this debt. Moreover, under the DOHA Appeal Board's jurisprudence, debts that are beyond the statute of limitations for collections cannot be mitigated solely because they are not collectable.[7]

In this instance, I do not have to decide whether SPC committed a material breach of the contract. Nor do I have to decide the remedy for the breach of contract. I only have

[7] The statute of limitations clearly and unequivocally ends an Applicant's legal responsibility to pay the creditor after the passage of a certain amount of time, as specified in state law. In a series of decisions the Appeal Board has rejected the statute of limitations for debts generated through contracts, which is the law in all 50 states, as automatically mitigating financial considerations concerns under AG ¶ 20(d). *See* ISCR Case No. 08-01122 at 4 (App. Bd. Feb. 9, 2009); ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008); ADP Case No. 07-13041 at 5 (App. Bd. Sep. 19, 2008); ISCR Case No. 07-11814 at 2 (App. Bd. Dec. 29, 2008) ADP Case No. 06-14616 at 3 (App. Bd. Oct. 18, 2007) (stating, "reliance upon legal defenses such as the statute of limitations does not necessarily demonstrate prudence, honesty, and reliability; therefore, such reliance is of diminished probative value in resolving trustworthiness concerns arising out of financial problems. *See, e.g.*, ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)."). *See also* ISCR Case No. 15-01208 at 3 (App. Bd. Aug. 26, 2016) (stating "We also have held that reliance on a state's statute of limitations does not constitute a good-faith effort to resolve financial difficulties and is of limited mitigative value. ADP Case No. 06-18900 at 5 (App. Bd. Jun. 6, 2008) (citing ISCR Case No. 03-04779 at 4 (App. Bd. Jul. 20, 2005) and ISCR Case No. 01-09691 at 2-3 (App. Bd. Mar. 27, 2003))).

This opinion does not assert that the statute of limitations provides any mitigation under Guideline F; however, this aspect of Applicant's financial situation is a circumstance which may explain Applicant's failure to take more timely and aggressive actions to resolve his delinquent debt. The Appeal Board has not defined how long after the statute of limitations expires an Applicant must wait before receiving a fresh start similar to that received when debts are discharged under Chapter 7 of the Bankruptcy Code.

to decide whether Applicant "has a reasonable basis to dispute the legitimacy of the [SPC or CA debt] and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue." His dispute is reasonable, and he has taken actions to resolve the dispute by seeking a copy of the contract and by telling SPC to rescind the contract. I believe that if SPC offers a reasonable settlement of the debt, Applicant will pay for the solar panels. If SPC takes legal action by filing a mechanics lien against his property or by obtaining a judgment, Appellant will pay this debt. He has the resources available to pay this debt. AG ¶ 20(e) is established.

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 non-SOR 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.

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 64 years old, and a DOD contractor has employed him as an engineer for 33 years. He served on active duty in the Air Force from 1972 to 1976; he left active duty as a staff sergeant; and he received an honorable discharge. In 2007, he received a bachelor's degree in business administration. In 2009, he married, and he does not have any children. There is no evidence of security violations, abuse of alcohol, or use of illegal drugs.

Applicant's SOR alleges one delinquent debt totaling $25,070. In 2013, Applicant completed a hand-written agreement to have solar panels installed on his residence for $16,000. He paid $1,000 as a down payment. He was supposed to start making payments in the fall of 2015; however, the company that purchased the debt wanted 22 percent interest instead of the 5 percent interest Applicant agreed to pay. He attempted to rescind the contract. He is willing to pay the $15,000 owed at an interest rate of five percent. He is attempting to negotiate a settlement in good faith. All of his other debts are current.

Applicant's August 30, 2016 credit report lists 20 accounts, and his June 6, 2017 credit report lists 12 accounts. Both reports show two accounts have past-due balances. He established his mortgage account was current, and he has $900,000 equity in his home. He has a strong incentive to avoid foreclosure, and I am confident he will ensure his mortgage is current. The other debt with a past-due balance in his credit report is the SPC or CA debt. 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.[8]

[8] Failure to show financial responsibility 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-

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
Subparagraph 1.a:	For Applicant

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.

_____
Mark Harvey
Administrative Judge

03646 at 2 (App. Bd. Dec. 28, 2011)). *See also* ISCR Case No. 04-03907 at 2 (App. Bd. Sept. 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.