DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
---	)	ISCR Case No. 15-08381
	)	
Applicant for Security Clearance	)	

Appearances

For Government: David F. Hayes, Esquire, Department Counsel
For Applicant: *Pro se*

02/22/2018

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Decision

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GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding financial considerations and personal conduct. Eligibility for a security clearance and access to classified information is granted.

Statement of the Case

On April 27, 2015, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application. On March 4, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to him, under Exec. Or. 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006.[1] The SOR alleged

security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct), and detailed reasons why the DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

It is unclear when Applicant received the SOR as there is no receipt in the case file. On March 30, 2016, he responded to the SOR and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on July 1, 2016. The case was assigned to me on May 26, 2017. A Notice of Hearing was issued on August 4, 2017. I convened the hearing as scheduled on August 23, 2017.

During the hearing, Government exhibits (GE) 1 through GE 6, and Applicant exhibits (AE) A through AE G were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on September 1, 2017. I kept the record open to enable Applicant to supplement it. He took advantage of that opportunity and timely submitted several documents, which were marked and admitted as AE H through AE P, without objection. The record closed on October 17, 2017.

Findings of Fact

In his Answer to the SOR, Applicant admitted, with comments, all of the factual allegations pertaining to financial considerations (¶¶ 1.a. through 1.i.), but denied all pf the factual allegations pertaining to personal conduct (¶¶ 2.a. through 2.c.), in the SOR. Applicant's admissions and comments are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 54-year-old employee of a defense contractor. He has been a supply chain contracts manager with the company since April 2015. He previously held an identical position with another employer, and from June 2004 until June 2012, he was a subcontract manager for another employer. He is a 1981 high school graduate, with a 2006 bachelor's degree in organizational management. Applicant has never served in the U.S. military. Applicant was granted a security clearance with access to sensitive compartmented information (SCI) on an unspecified date, but in June 2012, that clearance was suspended or revoked. He does not currently have a security clearance. Applicant was married in May 2000. He has two children, born in 2004 and 2007.

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

Financial Considerations[2]

Applicant first started experiencing financial problems in 2004. He and his wife purchased a home, and they adopted a child that he characterized as a "micro-preemie." Because of the special needs child's health situation, the child spent nine-and-one-half weeks in the hospital, and after he was brought home, there were constant medical appointments and costly medical expenses. Applicant's wife was unable to continue working due to the child's complications and prematurity. Financially, things simply spiraled downward from 2006. With the national economy collapsing, the house Applicant purchased with an adjustable mortgage in 2004 was too expensive to retain. Without his wife's income, the continuing medical expenses made it difficult to make more than minimum payments on his accounts. In addition, Applicant resorted to using his credit cards, including his corporate credit card, to sustain their lifestyle. Increased interest on the credit cards made the financial difficulties even worse. He eventually sold the residence in a short-sale in about 2009, but he lost $160,000 in doing so. Applicant received an Internal Revenue Service (IRS) Form 1099-C, *Cancellation of Debt*, on the forgiven deficiency.

In 2010, Applicant engaged the services of an attorney, initially to assist him with the tax bill which developed as a result of the short-sale, but then to support a debt consolidation plan and repair Applicant's credit. After rejecting the attorney's suggestion regarding bankruptcy, Applicant agreed to comply with three required guidelines: 1) all communications would be only between the attorney and the creditors; 2) the attorney would negotiate with the creditors to establish settlements or repayment plans; and 3) Applicant was to stop making minimum payments to encourage the creditors to offer settlements. Applicant followed those guidelines, and he paid the attorney $3,500 of the required $5,000 as a retainer. As of the hearing, Applicant paid the attorney a total of $7,000. The agreement called for payments based on ten percent of the total remaining debt, which the attorney estimated as $7,500.[3] The attorney disputed most of the accounts with the credit reporting agencies.

Despite multiple requests, with the exception of two of the accounts, the attorney has failed or refused to furnish status reports for each of the accounts supposedly being negotiated. The attorney explained that those two accounts were no longer collectible as the statute of limitations had passed.[4] Applicant later enrolled in a financial counseling course presented by a nationally recognized radio personality, and the advice he received was the opposite of what the attorney said to do. Based on his experience with the attorney, Applicant now realizes that using a "professional" to assist him at the time was not the wisest course of action because he has apparently done more himself to resolve

[2] General source information pertaining to the financial accounts discussed below can be found in the following exhibits: GE 1 (e-QIP, dated April 27, 2015); GE 2 (Personal Subject Interview, dated July 13, 2015); GE 3 (Combined Experian, TransUnion, and Equifax Credit Report, dated June 2, 2015); GE 4 (Equifax Credit Report, dated June 29, 2016); and Applicant's Answer to the SOR, dated March 30, 2016.

[3] AE I (Letter, dated May 16, 2011); AE A (Letter, undated); AE B (e-mail, dated March 16, 2016); Tr. at 43-47.

[4] AE J (Letter, dated October 14, 2017)

his accounts than the attorney. Applicant intends to make restitution to all of his legitimate creditors.[5]

The SOR identified eight purportedly delinquent accounts that had been placed for collection or charged off, or filed as a judgment, as generally reflected by Applicant's June 2015 credit report or his June 2016 credit report. All of the debts were referred to Applicant's attorney to resolve, but Applicant has no documentation to indicate that the attorney took any action to do so. Those debts total approximately $40,128. The current status of those accounts, according to the credit reports, other evidence submitted by the Government and Applicant, and Applicant's comments regarding same, is as follows.

(SOR ¶ 1.a.): This is a judgment for $2,701 on an unspecified type of account with an unidentified creditor filed by a debt purchaser in December 2012.[6] Applicant was unaware of the account or the judgment as he had never been served with any court papers, and he was initially of the belief that the account belonged to his father. That belief turned out not to be the case. On September 5, 2017, because he could not get information regarding the status of the account from his attorney, Applicant submitted a letter to the judgment-creditor seeking validation of the account.[7] No response to the request has been submitted. On October 14, 2017, the attorney furnished Applicant with an update on the account. He indicated that since the judgment-creditor had failed to take further action on the judgment, and the statute of limitations had passed, the obligation was no longer collectible.[8] While there are no demonstrated negotiations or payments by Applicant, he has at least taken the first, though belated, step towards resolving the account. The account remains, however, unresolved.

(SOR ¶ 1.b.): This is a credit card account with a $7,300 credit limit and an unpaid balance of $6,685 that was charged off.[9] In July 2015, Applicant told an investigator from the U.S. Office of Personnel Management (OPM) that he intended to pay the creditor by December 2015.[10] That deadline was not met. On September 5, 2017, because he could not get information regarding the status of the account from his attorney, Applicant submitted a letter to the judgment-creditor seeking validation of the account.[11] No response to the request has been received. On October 14, 2017, the attorney furnished Applicant with an update on the account. He indicated that since the creditor had failed

[5] It should be noted that the Appeal Board has indicated that promises to pay off delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner. ISCR Case No. 07-13041 at 4 (App. Bd. Sep. 19, 2008) (citing ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999)).

[6] GE 2, *supra* note 2, at 7; GE 3, *supra* note 2, at 5; GE 4, *supra* note 2, at 1.

[7] AE N (Letter, dated September 5, 2017).

[8] AE J, *supra* note 4.

[9] GE 2, *supra* note 2, at 7; GE 3, *supra* note 2, at 6; GE 4, *supra* note 2, at 2.

[10] GE 2, *supra* note 2, at 7.

[11] AE L (Letter, dated September 5, 2017).

to take further action on the account, and the statute of limitations had passed, the obligation was no longer collectible.[12] While there are no demonstrated negotiations or payments by Applicant, he has at least taken the first, though belated, step towards resolving the account. The account remains, however, unresolved.

(SOR ¶¶ 1.c. and 1.e.): These are two bank credit cards in Applicant's wife's name, for which Applicant is an authorized user, with $13,000 and $5,600 credit limits and unpaid balances of $6,293 and $5,174 that were bundled together and eventually filed as a judgment against Applicant's wife.[13] As such, the judgment does not involve Applicant, and he has no legal responsibility for it. In March 2017, although the judgment was for $11,686, the parties agreed to a reduced settlement totaling $6,500, to be paid on March 24, 2017.[14] Applicant stated that he, not the attorney, had made the required payment by bank wire transfer.[15] He failed to submit any documents, such as a transaction memorandum, bank check, or receipt, to confirm the payment. Nevertheless, with no legal responsibility regarding the accounts or the judgment, the accounts should not have been included in the SOR. The accounts, with respect to Applicant, have been resolved.

(SOR ¶ 1.d.): This is a bank credit card account with a $6,000 credit limit and an unpaid balance of $5,584 for which a judgment in the amount of $6,292.85 was filed in March 2013.[16] On May 29, 2015, the judgment was satisfied.[17] The account has been resolved.

(SOR ¶ 1.f.): This is an unspecified type of account with an unpaid balance of $7,287 that was transferred or sold to a debt purchaser.[18] In July 2015, Applicant told the OPM investigator that he intended to pay the creditor by December 2015.[19] That deadline was not met. On September 6, 2017, because he could not get information regarding the status of the account from his attorney, Applicant submitted a letter to the judgment-creditor seeking validation of the account.[20] No response to the request was received by Applicant.[21] While there are no demonstrated negotiations or payments by Applicant, he

[12] AE J, *supra* note 4.

[13] GE 2, *supra* note 2, at 8; GE 3, *supra* note 2, at 6.

[14] AE D (Post Judgment Stipulation for Settlement, dated March 21, 2017).

[15] Tr. at 57.

[16] GE 2, *supra* note 2, at 7; GE 3, *supra* note 2, at 6; GE 4, *supra* note 2, at 2; AE C (Satisfaction of Judgment, dated May 29, 2015).

[17] AE C, *supra* note 16.

[18] GE 2, *supra* note 2, at 8; GE 3, *supra* note 2, at 15; GE 4, *supra* note 2, at 2.

[19] GE 2, *supra* note 2, at 8.

[20] AE M (Letter, dated September 6, 2017).

[21] AE K (e-mail, dated October 9, 2017).

has at least taken the first, though belated, step towards resolving the account. The account remains, however, unresolved.

(SOR ¶ 1.h.): This is a medical account with an unpaid balance of $272.[22] In July 2015, Applicant told the OPM investigator that his insurance should have paid the account, and that he intended to refile the insurance claim and pay the creditor by August 2015.[23] That deadline was not met. On August 28, 2017, because he could not get information regarding the status of the account from his attorney, Applicant submitted a letter to the collection agent seeking validation of the account.[24] On September 14, 2017, the collection agent responded by saying there was no balance due.[25] Applicant paid the bill as soon as he saw it.[26] The account has been resolved.

(SOR ¶ 1.i.): As part of his employment, Applicant was issued a corporate credit card with use limited to authorized corporate expenditures. During the period October 2011 through May 2012, Applicant misused the credit card for personal expenses in the approximate amount of $6,000 or $7,000.[27] Applicant said he did not know the credit card use was limited. Although Applicant initially attributed his misuse of the credit card to purchasing formula and medical expenses for his special-needs son,[28] a review of the charges in his monthly account statements reveals expenses for Starbucks, Dunkin Donuts, 7-11, outlet stores, grocery stores, gasoline, sports stores, clothing stores, produce markets, etc.[29] The employer terminated Applicant for his actions.[30] Applicant made complete restitution by exchanging his paid time-off entitlements.[31] The account has been resolved.

In October 2017, Applicant submitted a Personal Financial Statement. It indicated that his combined net monthly salary is $8,307; monthly expenses are $3,865; and debt payments are $3,126; leaving a monthly remainder of $1,316 available for discretionary saving or spending.[32] With the exception of the remaining unresolved debts listed above, Applicant has no other delinquent accounts. While it is unfortunate that he wasted valuable time and $7,000 in payments for legal services that were apparently never

[22] GE 2, *supra* note 2, at 9; GE 3, *supra* note 2, at 15; GE 4, *supra* note 2, at 2.

[23] GE 2, *supra* note 2, at 9.

[24] AE O (Letter, dated August 28, 2017).

[25] AE P (Letter, dated September 14, 2017).

[26] Tr. at 31.

[27] GE 5 (e-mail Stream, dated April 20, 2016); GE 5 (Card Statements, various dates).

[28] Applicant's Answer to the SOR, *supra* note 2, at 2.

[29] GE 5 (Card Statements), *supra* note 26.

[30] GE 6 (Incident History, dated June 25, 2012).

[31] GE 1, supra note 2, at 31; GE 2, supra note 2, at 5.

[32] AE H (Personal Financial Statement, dated October 15, 2017).

rendered, money which could have been paid to creditors, Applicant is now back on track in his effort to resolve his delinquent accounts. He has received financial counseling. With his wife back in the work force, Applicant has made significant progress in stabilizing his finances and avoiding other financial delinquencies.

Personal Conduct

(SOR ¶¶ 2.a. and 2.b.): On April 27, 2015, when Applicant completed his e-QIP, he responded to certain questions pertaining to his finances found in Section 26. Those questions asked if, in the past seven years, he had a judgment entered against him; he had any bills or debts turned over to a collection agency; he had any account or credit card suspended or cancelled for failing to pay as agreed; and if he has been over 120 days delinquent on any debt not previously entered; as well as if he is currently over 120 days delinquent on any debt. Applicant answered "no" to each of the questions. He certified that his responses to those questions were "true, complete, and correct" to the best of his knowledge and belief, but the responses to those questions were, in fact, false.

At the time he completed his e-QIP, Applicant was unaware that he had any such judgments or delinquent accounts, believing instead that all of his financial issues had been resolved when he hired his attorney in 2010. He contends that he first learned that his accounts were delinquent when he was apprised of them by the OPM investigator in July 2015 – years after he turned over his financial accounts to his attorney. He acknowledged that he failed to check with the attorney, and merely naively assumed he had a clean credit report.[33] He denied making a deliberate false statement regarding his financial obligations.[34]

(SOR ¶ 2.c.): This refers to the information set forth above associated with SOR ¶ 1.i., and is adopted herein.

Work Performance and Character References

The company Human Resources Manager has worked with Applicant – a peer manager – for over two years on a weekly basis. She characterized him as extremely competent and effective as a manager. She believes he is a person of strong moral character and is highly trustworthy.[35] The Information Systems (IT) Manager has also worked with Applicant for over two years. She said he is a person with integrity who is also trustworthy and reliable.[36] The Facility Security Manager has worked with Applicant for over one year. He considers Applicant to be trustworthy and dependable.[37]

[33] Tr. at 32-34.

[34] Applicant's Answer to the SOR, *supra* note 2, at 2.

[35] AE E (Character Reference, dated August 21, 2017).

[36] AE F (Character Reference, dated August 21, 2017).

[37] AE G (Character Reference, dated August 22, 2017).

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."[38] As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."[39]

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the guidelines in SEAD 4. In addition to brief introductory explanations for each guideline, the guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

In the decision-making process, facts must be established by "substantial evidence."[40] The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.[41]

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

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

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

[40] "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

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

transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Furthermore, "security clearance determinations should err, if they must, on the side of denials."[42]

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."[43] Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

> Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns under AG 19:

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

[43] *See* Exec. Or. 10865 § 7.

(a) inability to satisfy debts;

(b) unwillingness to satisfy debts regardless of the ability to do so; and

(c) a history of not meeting financial obligations.

Eight purportedly delinquent accounts debts, totaling approximately $40,128, were placed for collection or charged off, or filed as a judgment, as generally reflected by Applicant's credit reports. There is no evidence that he was unwilling to satisfy his debts or that he had the ability to do so, and there is no evidence of frivolous or irresponsible spending, or consistent spending beyond his means. AG ¶¶ 19(a) and 19(c) have been established. AG ¶ 19(b) has not been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties under AG ¶ 20:

> (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
>
> (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;[44] and

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

> In order to qualify for application of [the "good-faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the "good-faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

(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.

I have concluded that ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(e) all partially or fully apply. Although Applicant first started experiencing financial problems in 2004, when he purchased a home and adopted a child with substantial health issues. Applicant's wife was unable to continue working due to the child's complications and prematurity. Things simply spiraled downward from 2006. With the national economy collapsing, the house Applicant purchased with an adjustable mortgage in 2004 was too expensive to retain. Without his wife's income, the continuing medical expenses made it difficult to make more than minimum payments on his accounts. Applicant resorted to using his credit cards, as well as his corporate credit card, to obtain groceries and other necessities. Increased interest on the credit cards made the financial difficulties even worse. He eventually sold the residence in a short-sale in about 2009, and he received an IRS Form 1099-C for $160,000 on the forgiven deficiency.

In 2010, Applicant engaged the services of an attorney, initially to assist him with the tax bill which developed as a result of the short-sale, but then to support a debt consolidation plan and repair Applicant's credit. After rejecting the attorney's suggestion regarding bankruptcy, Applicant agreed to comply with three required guidelines: 1) all communications would be only between the attorney and the creditors; 2) the attorney would negotiate with the creditors to establish settlements or repayment plans; and 3) Applicant was to stop making minimum payments to encourage the creditors to offer settlements. Applicant naively followed those guidelines, and he paid the attorney $3,500 of the required $5,000 as a retainer. As of the hearing, Applicant paid the attorney a total of $7,000 – funds that could have been used to resolve one or more of his accounts. The attorney disputed most of the accounts with the credit reporting agencies. It remains unclear if any other actions were taken by the attorney to resolve the accounts. Those factors – the plummeting national economy and the soaring adjustable rate mortgage interest; the necessary short-sale and associated Form 1099-C increasing his income tax burden; the health situation regarding Applicant's child; Applicant's wife being unable to continue working because of the child's health; and the actions taken (or not taken) by Applicant's attorney which did nothing to resolve the accounts, but may have actually exacerbated the financial issues – were clearly beyond Applicant's control.

Although he was faced with insufficient funds to enable him to maintain his accounts in a current status, Applicant took the honorable course of action and sought the assistance of a "professional." He rejected a proposed resolution by bankruptcy, and instead sought a debt consolidation plan and credit repair offered by the attorney. It is unclear if the program the attorney presented was realistic or merely a scam since the attorney has, with the exception of two of the accounts, failed or refused to furnish status reports for each of the accounts supposedly being negotiated over a period of years. Not only did Applicant resolve some of the accounts himself, without his attorney's assistance, he resolved two of his wife's accounts erroneously alleged in the SOR that were not his legal responsibility. With a new outlook with respect to his attorney, and new financial

guidance which differs from his attorney's advice, as well as with his steady employment and his wife's return to the labor force, Applicant anticipates being able to continue addressing his accounts by himself and make good-faith payments directly to his creditors to more rapidly resolve those delinquent accounts. Applicant's unusual relationship with the attorney is unlikely to recur now that Applicant is armed with the financial counseling he should have had years ago.

Clearance decisions are aimed at evaluating an applicant's judgment, reliability, and trustworthiness. They are not a debt-collection procedure. The guidelines do not require an applicant to establish resolution of every debt or issue alleged in the SOR. An applicant needs only to establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant immediately resolve issues or make payments on all delinquent debts simultaneously, nor is there a requirement that the debts or issues alleged in an SOR be resolved first. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts, or resolution of such issues, one at a time.

Applicant received two conflicting types of financial counseling. Other than those accounts which remain unresolved, Applicant has no other delinquent accounts. Despite the questionable guidance and actions by the attorney, Applicant has made significant progress by himself in stabilizing his finances and avoiding other financial delinquencies. With a current monthly remainder of $1,316 that might be available for discretionary spending or savings, Applicant's finances appear to be under better control. When confronted with the issues that caused his financial problems, and faced with insufficient funds to immediately remedy the situation, with the exception of using his corporate credit card for personal expenses, Applicant acted responsibly by dealing with his creditors or collection agents through an attorney.[45] While the attorney's actions are suspect, Applicant's actions under the circumstances no longer cast doubt on his current reliability, trustworthiness, and good judgment.[46]

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 18:

> Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to

[45] "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

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

cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

> (a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and
>
> (b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

The guideline notes two conditions that could raise security concerns under AG ¶ 16:

> (a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities; and
>
> (d) Credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of: . . . (4) evidence of significant misuse of [the] employer's time or resources.

As noted above, on April 27, 2015, when Applicant completed his e-QIP, he responded to certain questions pertaining to his financial record. The questions in Section 26 – Financial Record, asked if, in the past seven years, he had a judgment entered against him; he had any bills or debts turned over to a collection agency; he had any account or credit card suspended or cancelled for failing to pay as agreed; and if he has been over 120 days delinquent on any debt not previously entered; as well as if he is currently over 120 days delinquent on any debt. Applicant answered "no" to each of the questions. He certified that his responses to those questions were "true, complete, and correct" to the best of his knowledge and belief, but the responses to those questions were, in fact, false.

Applicant's comments provide sufficient evidence to examine if his submissions were deliberate falsifications, as alleged in the SOR, or merely inaccurate answers that were the result of oversight or misunderstanding of the true facts on his part. Proof of incorrect answers, standing alone, does not establish or prove an applicant's intent or state of mind when the falsification or omission occurred. As an administrative judge, I must consider the record evidence as a whole to determine whether there is a direct or circumstantial evidence concerning Applicant's intent or state of mind at the time the alleged falsification or omission occurred. I have considered the entire record, including Applicant's initial and subsequent comments.[47]

Applicant's explanations for his submissions, in my view, were that he essentially misunderstood the status of his accounts because he had turned responsibility for them over to his attorney five years earlier. A review of those accounts seems to indicate that they became delinquent or were filed as judgments after 2010. Applicant, clearly a financially naive person, was under the impression that his attorney had negotiated settlements and had resolved the accounts. He acknowledged that it was clearly a misunderstanding or oversight on his part. In light of Applicant's explanations, and in the absence of more persuasive evidence to the contrary, I conclude that, with respect to his responses in the e-QIP, AG ¶ 16(a) has not been established.

With respect to Applicant's misuse of his corporate credit card for personal expenses, as noted above, during the period October 2011 through May 2012, Applicant misused his corporate credit card for personal expenses in the approximate amount of $6,000 or $7,000. The employer terminated Applicant for his actions. AG ¶ 16(d) has been established.

The guideline also includes examples of conditions under AG ¶ 17 that could mitigate security concerns arising from personal conduct. They include:

> (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

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[47] The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

> (a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)). *See also* ISCR Case No. 08-05637 at 3 (App. Bd. Sept. 9, 2010) (noting an applicant's level of education and other experiences are part of entirety-of-the-record evaluation as to whether a failure to disclose past-due debts on a security clearance application was deliberate).

> (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and
>
> (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

I have concluded that AG ¶¶ 17(c) and 17(e) apply, and AG ¶ 17(d) partially applies. During the period of substantial financial distress (October 2011 through May 2012), Applicant misused his corporate credit card for personal expenses. He was terminated for his actions and made complete restitution. Applicant claimed ignorance regarding the corporate policy pertaining to such use of the corporate credit card, and there is no evidence to refute his position. While the offense cannot be considered minor, the behavior lasted only for seven months, and nearly six years have passed since the most recent incident, without recurrence of such conduct. To his credit, Applicant was candid when he self-reported the entire situation in his e-QIP. Applicant's actions under the circumstances no longer cast doubt on his current reliability, trustworthiness, and good judgment.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at SEAD 4, App. A, ¶ 2(d):

> (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under SEAD 4, App. A, ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.[48]

[48] *See U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); *See also* ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

There is some evidence against mitigating Applicant's conduct. Eight purportedly delinquent accounts debts, totaling approximately $40,128, were placed for collection or charged off, or filed as a judgment, as generally reflected by Applicant's credit reports. Applicant took little personal action to resolve most of his delinquent accounts over a period of seven years, naively relying, instead, on the promised and claimed actions of an attorney. During that period, Applicant complied with three required guidelines: 1) all communications would be only between the attorney and the creditors; 2) the attorney would negotiate with the creditors to establish settlements or repayment plans; and 3) Applicant was to stop making minimum payments to encourage the creditors to offer settlements. He misused his corporate credit card for personal expenses.

The mitigating evidence under the whole-person concept is more substantial. Several factors combined to create a difficult financial situation for Applicant: the plummeting national economy and the soaring adjustable rate mortgage interest; the necessary short-sale and associated Form 1099-C increasing his income tax burden; the health situation regarding Applicant's child; Applicant's wife being unable to continue working because of the child's health; and the actions taken (or not taken) by Applicant's attorney which did nothing to resolve the accounts. Applicant paid the attorney a total of $7,000 to resolve his debts. He complied with the attorney's guidelines. Despite multiple requests by Applicant, with the exception of two of the accounts, the attorney failed or refused to furnish status reports for each of the accounts supposedly being negotiated. Applicant later obtained financial counseling from another source, and the advice he received was the opposite of what the attorney said to do. Applicant now realizes that using a "professional" to assist him at the time was not the wisest course of action. Finally asserting himself, Applicant personally addressed his accounts and contacted the creditors or collection agents. In addition to the $7,000 he essentially wasted on the attorney, exercising good-faith efforts, Applicant resolved a number of accounts, including two of his wife's accounts for which he had no legal responsibility, simply because they were erroneously alleged in the SOR. With a monthly remainder of $1,316 available for discretionary saving or spending, and no other delinquent accounts, Applicant's financial situation is now under better control. He intends to continue making restitution to all of his remaining legitimate creditors.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:[49]

> In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has ". . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan." The Judge can reasonably consider the entirety of an applicant's financial situation and his [or her] actions in evaluating the extent to which that

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

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.

Applicant has demonstrated a rather unusual, but positive track record of debt reduction and elimination efforts. Because of the delaying tactics of his attorney, accounts were not resolved as he anticipated. Rejecting the attorney's inaction, Applicant started addressing his accounts himself. Several accounts have already been resolved. There are no other more recent delinquent accounts. Applicant has embraced the financial counseling of someone other than his attorney, and he is now armed with the knowledge and tools to effectively address his creditors. He has a substantial monthly remainder, and his financial situation is under better control.

Overall, the evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has mitigated the security concerns arising from his financial considerations. *See* SEAD 4, App. A, ¶¶ 2(d)(1) through AG 2(d)(9).

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a. through 1.i:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a. through 2.c:	For Applicant

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 Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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ROBERT ROBINSON GALES
Administrative Judge