



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



In the matter of:

ISCR Case No. 16-03704

Applicant for Security Clearance

**Appearances**

For Government: Erin P. Thompson, Esq., Department Counsel  
For Applicant: James F. Jacobson, Esq.

05/07/2018

**Decision on Remand**

HARVEY, Mark, Administrative Judge:

Applicant provided insufficient evidence that he was unable to make payments to two of the creditors on his statement of reasons (SOR). Financial considerations security concerns are not mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

On September 29, 2015, Applicant signed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). Government Exhibit (GE) 1. On December 29, 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 January 30, 2017, Applicant provided a response to the SOR, and he requested a hearing. HE 3. On March 29, 2017, Department Counsel was ready to proceed. On April 24, 2017, the case was assigned to me. On September 6, 2017, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the

hearing for September 18, 2017. HE 1. Applicant waived his right to 15 days of notice of the date, time, and location of his hearing. Transcript (Tr.) 11. Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered four exhibits; Applicant did not offer any exhibits; there were no objections; and all proffered exhibits were admitted into evidence. Tr. 13-15; GE 1-4. On September 27, 2017, DOHA received the hearing transcript. On December 14, 2017, I issued a decision denying Applicant's access to classified information. On March 19, 2018, the Appeal Board remanded the case to me because I failed to consider evidence submitted after the hearing. Applicant provided 21 exhibits, which were admitted without objection. Applicant Exhibits (AE) A-AE U. AE V is an email I sent to Applicant's counsel about AE J-AE T. The record closed on May 4, 2018.

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 admitted he incurred the debts in SOR ¶¶ 1.a through 1.h. He also provided mitigating information. HE 3.

Applicant is 45 years old, and he has been employed as a half-owner of an engineering firm since April 2011. Tr. 23, 26; GE 1. In 1989, Applicant graduated from high school, and he joined the Navy that same year. Tr. 25. He served on active duty in the Navy from 1989 to 1996, and in the inactive reserve until 1997. Tr. 29. He received the following medals and ribbons: Navy Achievement Medal; National Defense Service Medal; Southwest Asia Service Medal; Navy Good Conduct Medal; and Sea Service Deployment Ribbon. AE F. He also received an honorable discharge. Tr. 25. He held a security clearance when he was in the Navy. Tr. 25. He completed numerous training courses while in the Navy. AE F. There is no evidence of security violations, abuse of alcohol, or use of illegal drugs while holding a security clearance.

In 1994, Applicant married, and his spouse does not work outside of their home. Tr. 26. Their two daughters are attending college, and financial support for his two daughters totals about \$48,000 annually. Tr. 23, 26-27.

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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 Considerations

In 2008, Applicant's engineering firm was incorporated. Tr. 24. His business increased its income in 2010 and 2011. For the last three or four years, he has been paid about \$200,000. Tr. 23, 35. He made more than \$200,000 in 2016. Tr. 36. After all bills are paid, he has a monthly remainder of about \$4,000. Tr. 38.

Applicant's mortgage is about \$278,000, and the only time he fell behind on his mortgage was around 2010 and 2011. Tr. 28. He fell behind on his mortgage more than four months. Tr. 28. In 2012 or 2013, he became current on his mortgage. Tr. 29. In 2014, Applicant went to Greece for pleasure, and the trip cost about \$10,000. Tr. 30. He said his other overseas trips were for business reasons.

The SOR alleges eight delinquent debts totaling \$48,687, and the record establishes the status of Applicant's accounts as follows:

SOR ¶ 1.a alleges a charged-off credit card debt for \$18,696. Applicant's January 20, 2017 TransUnion credit report shows his last payment was made in July 2010; this debt is charged off; and it was scheduled to be removed from his credit report in January 2018. SOR response, AE A at 9. Applicant said the creditor sent him information about release of the debt, and he paid taxes on the reduction in debt. Tr. 17. Applicant did not remember how much he paid to settle the debt. Tr. 33. The tax returns he provided did not show he paid taxes on savings from not paying this debt. He did not provide an IRS Form 1099-C pertaining to this debt.

SOR ¶¶ 1.b, 1.c, and 1.e allege three charged-off debts owed to the Bank C for \$15,210, \$8,906, and \$1,865. Applicant's January 20, 2017 TransUnion credit report indicates the Bank C three debts were last updated as charged off in 2013. AE A at 5-7. Applicant provided documentation from Bank C showing four debts for \$712, \$1,501, \$7,745, and \$14,402, totaling \$24,363 were discharged as indicated on IRS Form 1099-Cs issued in 2013. Tr. 18-20; SOR response; AE B, AE A at 6-7. His 2013 federal income tax return shows Applicant paid taxes on the savings he received when his liability for the three debts was cancelled. Tr. 20; IRS Form 1040, line 21; AE B. His 2013 IRS Form 1040 shows \$24,363 on line 21, other income cancellation of debt, of his IRS Form 1040. SOR response; AE B. On October 5, 2017, Applicant asked Bank C to ensure the information about the three charged-off accounts is removed from his credit reports. AE S; AE T. On October 28, 2017, the creditor wrote that it was not reporting one account to the credit reporting companies. AE B; AE G. Applicant's debts owed to Bank C are resolved.

SOR ¶ 1.d alleges a charged-off department store debt for \$2,165. Applicant's January 20, 2017 TransUnion credit report shows: his last payment was made in July 2010; this debt is charged off; and it was scheduled to be removed from his credit report in June 2017. SOR response, AE A at 8. Applicant said he paid taxes on the savings he received when his liability for the debt was released. Tr. 19. He did not provide an IRS Form 1099-C for this debt or a tax return showing he paid taxes on the release of this debt.

After receiving post-hearing exhibits AE J-AE T on April 10, 2018, I sent an email to Applicant's counsel stating:

I have reviewed the documents you submitted.

I did not see anything that showed any payments on the debts in SOR para. 1.a [ ] for \$18,696 or para. 1.d [ ] for \$2,165. I did not see a[n] IRS Form 1099-C for either account.

I see the debts in SOR 1.a and 1.d were dropped from his credit report, apparently they aged off of his reports. As you know, they cannot be mitigated based on being charged off or dropped from his credit reports.

Did I miss something? Was there anything else you wanted to submit? I can give you some more time, if you need it?

AE V. Applicant's counsel responded:

Please see the attached Exhibit U, which is correspondence sent to [the creditor] regarding the items 1.a and 1.d. There has been no response to the letters that are Exhibit U. . . . [T]he additional documents provided must be looked at and viewed in the totality of the circumstances. They are not meant to fit within a narrow slot of "was the debt paid back in full" and [Applicant] has no control over whether the entity issues the appropriate tax charge off document. The mitigating factors outlined in Guideline F and the whole person concept from which this matter must be analyzed [to] demonstrate that these additional documents, coupled with what was initially presented, show that mitigating circumstances have been met. These additional documents show that 1.a and 1.d have been resolved to the satisfaction of the parties, which was the stated concern in your initial decision.

AE U. On April 16, 2018, Applicant's counsel wrote the creditor in SOR ¶¶ 1.a and 1.d:

I am writing to you on behalf of my client [ ] in relation to the above referenced account and the debt associated with it. It is my client's understanding that such debt was previously charged off by your entity. We are requesting that you forward us a 1099-C tax form in accordance with that understanding. Please advise immediately if you dispute the charge off in any fashion. Please contact me should you have any questions or matters to address.

AE U.

SOR ¶¶ 1.f, 1.g, and 1.h allege three medical debts placed for collection for \$1,370, \$305, and \$170. A medical creditor wrote that as of June 10, 2016, medical debts for \$531 and \$2,383 were paid in full. AE C. On January 18, 2017, Applicant paid a medical

collection agent \$2,914, and he said the three medical debts alleged in SOR ¶¶ 1.f, 1.g, and 1.h are paid. Tr. 21-22; SOR response, AE C. Applicant's September 15, 2017 Equifax Credit Report shows payment of a medical collection debt for \$161 on October 20, 2016. AE H at 40. All medical debts are resolved.

When Applicant received the SOR, he said he contacted one, two, or possibly all of the SOR creditors about the accounts. Tr. 39. Applicant's home loan, vehicle loan, and other debts are all current. Tr. 22; SOR response.

Applicant provided his IRS Form 1040s for his 2013-2015 federal income tax returns. SOR response; AE B. Those three IRS Form 1040s are the sources for the information in this table.

Year	Adjusted Gross Income	Cancelled Debt from IRS Form 1099-Cs Exhibit
2009	\$72,902	\$0 (AE L)
2010	\$83,019	\$0 (AE E; AE M)
2011	\$108,699	\$5,312 (AE N) <sup>3</sup>
2012	\$168,784	\$3,032 (AE O) <sup>4</sup>
2013	\$161,933	\$24,363 (AE P)
2014	\$214,134	\$0 (AE Q)
2015	\$174,017	\$0 (AE R)
2016	\$247,255	\$0 (AE S)

When Applicant responded to the SOR, he said the five debts in SOR ¶¶ 1.a through 1.e totaling \$46,842 were not collectible because of the statute of limitations. Applicant indicated the state statute of limitations for contracts is five years. He did not provide proof of any payments to these five creditors.

A 2013 IRS Form 1099-C showing a debt from a collection agent for \$712 was canceled; however, Applicant did not provide evidence connecting the \$712 IRS Form 1099-C to any debt on the SOR. SOR response, AE B.

Applicant's September 15, 2017 Equifax credit report only has one negative entry. AE A. A debt for \$161 went to collections in June 2016, and was subsequently paid. AE A at 40. His April 5, 2018 Equifax, TransUnion, and Experian credit reports indicate he had one late payment, no collection accounts, and no judgments. AE I-AE K. His credit scores on two reports were 720, which falls in the "good range." AE I-AE K. His credit reports reflect numerous accounts paid as agreed.

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<sup>3</sup> The IRS Form 1099-C was from a non-SOR creditor. AE N.

<sup>4</sup> The IRS Form 1099-C was from a non-SOR creditor. AE O.

## 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 three 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”; and “(c) a history of not meeting financial obligations.” 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), and 19(c) 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>5</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;

(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; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

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).

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<sup>5</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)).



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

The SOR alleges eight delinquent debts totaling \$48,687. Applicant did not provide any evidence of any payments to address the five debts in SOR ¶¶ 1.a through 1.e totaling \$46,842. Applicant paid the debts in SOR ¶¶ 1.f, 1.g, and 1.h totaling \$1,845. He is credited with mitigating the debts in SOR ¶¶ 1.b, 1.c, and 1.e because the creditor released or cancelled any interest in collection with IRS Form 1099-Cs in 2013. Applicant paid federal income taxes on the financial gain he received from cancelation of the three debts. He cannot be expected to take additional actions to resolve debts that a creditor has considered to be resolved since 2013, especially after he has paid taxes on his discharged debts. Some mitigation credit is lost due to the paucity of evidence of efforts to pay those three debts from 2010 to 2013. Applicant did not make any promises at his hearing or in his SOR response to pay the debts in SOR ¶¶ 1.a and 1.d and there are no IRS Form 1099-Cs for those two accounts.<sup>6</sup>

Applicant's credit reports indicate that several of his debts are in charged-off status. Eventually the charged-off debts were 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>7</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. "Mere evidence that debts no longer appear on credit reports is not reason to believe that they are not legitimate or that they have been satisfactorily revolved." ISCR Case No. 16-02941 at 2 (App. Bd. Dec. 29, 2017) (citing ISCR Case No. 14-03747 at 2-3 (App. Bd. Nov. 13, 2015)).

Applicant primarily relies on the debts in SOR ¶¶ 1.a and 1.d being collection barred by the state five-year statute of limitations, and they have been charged off with the creditor not currently seeking repayment. All states have statutes of limitations upon collectability of debts based on contracts, such as credit card debts, which range from three to six years. The South Carolina Court of Appeals succinctly explained the societal and judicial value of application of the statute of limitations:

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<sup>6</sup> 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. Sept. 19, 2008) (citing ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999)). A promise to pay debts is given greater weight when there is a track record of paying other debts.

<sup>7</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>.

Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence and promote repose by giving security and stability to human affairs. The cornerstone policy consideration underlying statutes of limitations is the laudable goal of law to promote and achieve finality in litigation. Significantly, statutes of limitations provide potential defendants with certainty that after a set period of time, they will not be ha[iled] into court to defend time-barred claims. Moreover, limitations periods discourage plaintiffs from sitting on their rights. Statutes of limitations are, indeed, fundamental to our judicial system.

*Carolina Marine Handling, Inc. v. Lasch*, 363 S.C. 169, 175-76, 609 S.E.2d 548, 552 (S.C. Ct. App. 2005) (internal quotation marks and citations omitted). As a general statement, under the Appeal Board's jurisprudence, debts that are beyond the statute of limitations for collections cannot be mitigated solely because they are not collectable.<sup>8</sup>

The DOHA Appeal Board reinforced its position on statutes of limitations not mitigating financial considerations concerns stating:

In this case, the Judge noted that Applicant explained that he did not owe any of the alleged debts because they had either been deleted from his credit report or soon would be deleted, and he also relied on a state statute of limitations to absolve himself of debts. The Appeal Board has long recognized that debts remain relevant for security clearance purposes even

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<sup>8</sup> 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. 10-03656 at 3 (App. Bd. Jan. 19, 2011) ("The security significance of long delinquent debts is not diminished merely because the debts have become legally unenforceable owing to the passage of time. Security clearance decisions are not controlled or limited by any statute of limitation, and reliance on the non-collectability of a debt does not constitute a good-faith effort to resolve that debt within the meaning of the Directive. See, e.g., ISCR Case No. 00-0030 at 3 (App. Bd. Sep. 20, 2001); ISCR Case No. 07-16841 at 4 (App. Bd. Dec. 19, 2008). A security clearance adjudication is not a proceeding aimed at collecting an applicant's personal debts. Rather a security clearance adjudication is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness to make a decision about the applicant's security eligibility. Accordingly, even if a delinquent debt is legally unenforceable under state law, the federal government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy the debt in a timely manner. ISCR Case No. 00-0345 at 3 (App. Bd. Dec. 12, 2001); ISCR Case No. 01-09691 at 3 (App. Bd. Mar. 27, 2003); ISCR Case No. 07-09966 at 2-3 (App. Bd. Jun. 25, 2008)."). 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 debts. 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.

if they are no longer enforceable due to the running of the statute of limitations or cannot be legally listed on a credit report due to the passage of time. See e.g., ISCR Case No. 03-04779 at 4 (App. Bd. Jul. 20, 2005) and ISCR Case No. 03-20327 at 6 (App. Bd. Oct 26, 2006).<sup>9</sup> 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)).

ISCR Case No. 15-01208 at 3 (App. Bd. Aug. 26, 2016).

Applicant did not provide enough details about what he did to address his SOR debts in ¶¶ 1.a and 1.d over the last seven years prior to issuance of the SOR. He did not provide sufficient documentation relating to these two SOR debts: (1) proof of payments, such as checking account statements, photocopies of checks, or a letter from the creditor proving that he paid or made any payments to the creditors; (2) correspondence to or from the creditors to establish maintenance of contact;<sup>10</sup> (3) credible debt disputes indicating he did not believe he was responsible for the debts and why he held such a belief; (4) more evidence of attempts to negotiate payment plans, such as settlement offers or agreements to show that he was attempting to resolve these debts; or (5) other evidence of progress or resolution. Applicant failed to establish mitigation under AG ¶ 20(e) because he did not provide documented proof to substantiate the existence, basis, or the result of any debt disputes. The fact that a creditor has charged off a debt is not a valid basis to mitigate a debt under AG ¶ 20(e).

Applicant's focus on his credit reports showing that he has favorably resolved many of his debts is misplaced. It is worthwhile to repeat that "the contents of credit reports in and of themselves do not provide meaningful evidence that debts have been resolved to an extent sufficient to show mitigation of the security concerns arising from financial delinquencies." ISCR Case No. 15-05047 at 5 (App. Bd. Nov. 8, 2017) (citing ISCR Case No. 15-02957 at 3 (App. Bd. Feb. 17, 2017)).

Applicant's counsel misinterprets my previous opinion in this case. The goal is not to obtain an IRS Form 1099C from the creditors in SOR ¶¶ 1.a and 1.d. Once an IRS Form 1099C is received an Applicant has to pay taxes on the discharged amount, and it would be unreasonable for the debtor to repay the debt. Applicant admits that he obtained

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<sup>9</sup> Compare ISCR Case No. 12-04806 (App. Bd. Jul. 3, 2014). In that case, Applicant corroborated efforts to settle debts that were in "charged-off" status. Also, that Applicant had received financial counseling. Ultimately, the Board affirmed the Judge's favorable decision.

<sup>10</sup> "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.

funds from the creditor, which is the basis of SOR ¶¶ 1.a and 1.d, and he did not repay the two debts. The evidence of record establishes that he had the income to pay the two debts. He had time after his hearing to arrange a payment plan and start making payments to the creditor.

There is insufficient evidence about why Applicant was unable to make greater progress resolving the debts in SOR ¶¶ 1.a and 1.d. There is insufficient assurance that these two debts are being resolved. Under all the circumstances, he failed to establish that financial considerations security concerns are mitigated.

### **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 45 years old, and he has been employed as a half-owner of an engineering firm since April 2011. In 1989, Applicant joined the Navy. He served on active duty in the Navy from 1989 to 1996, and in the inactive reserve until 1997. Tr. 29. He received several medals and ribbons while he was in the Navy, and he received an honorable discharge. He held a security clearance when he was in the Navy. There is no evidence of security violations, abuse of alcohol, or use of illegal drugs while holding a security clearance.

In 1994, Applicant married, and his spouse does not work outside of their home. Their two daughters are attending college, and support for his two daughters totals about \$48,000 annually.

The SOR alleges eight delinquent debts totaling \$48,687. Applicant is credited with mitigating all of the SOR debts, except for the debts in SOR ¶¶ 1.a and 1.d.

Applicant provided insufficient corroborating or substantiating documentary evidence of payments and established payment plans for the debts in SOR ¶¶ 1.a and 1.d. He did not establish he had insufficient income to address these two SOR debts. His actions show lack of financial responsibility and judgment and raise unmitigated questions about Applicant's reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18. More information about inability to pay debts, financial history, or documented financial progress is necessary to mitigate security concerns.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont*, 913 F. 2d at 1401. Unmitigated financial considerations lead me to conclude that grant of a security clearance to Applicant is not warranted at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards documented resolution of his past-due debts, and a track record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

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 consideration concerns are not mitigated, and it is not clearly consistent with the national interest to grant Applicant security clearance eligibility at this time. Financial considerations concerns are not mitigated.

### **Formal Findings**

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b and 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e through 1.h:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or reinstate Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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MARK HARVEY  
Administrative Judge