DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
---	)	ISCR Case No. 17-04109
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Bryan Olmos, Esquire, Department Counsel
For Applicant: *Pro se*

10/29/2018

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding financial considerations. Eligibility for a security clearance is granted.

Statement of the Case

On September 30, 2016, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application. On January 3, 2018, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to him, under Executive Order (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 Directive 4 of the Security Executive Agent (SEAD 4), (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, effective June 8, 2017.

The SOR alleged security concerns under Guideline F (Financial Considerations), 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.

Applicant received the SOR on January 12, 2018. In a notarized statement, dated January 25, 2018, Applicant responded to the SOR and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on February 14, 2018. The case was assigned to me on March 20, 2018. A Notice of Hearing was issued on June 29, 2018. I convened the hearing as scheduled on July 26, 2018.

During the hearing, Government exhibits (GE) 1 through GE 5, and Applicant exhibits (AE) A through AE C were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on August 7, 2018. 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 D through AE V without objection. The record originally closed on August 23, 2018, but because of technical difficulties, it remained open until October 24, 2018.

Findings of Fact

In his Answer to the SOR, Applicant admitted with comments only one of the factual allegations in the SOR (SOR ¶ 1.g.), and he denied with comments the remaining allegations. 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 45-year-old contract employee of a defense contractor. He has been serving as an over-the-road truck driver or owner-operator with a series of different employers since 2006. He completed his high school education through a General Educational Development (GED) test in 1994. Applicant has never served with the U.S. military. He was granted a Transportation Worker Identification Credential - also known as TWIC® - in 2010.[1] Applicant was married in March 1997, and divorced in October 2012. He remarried in October 2015. He has three children, born in 1997, 1999, and 2001.

[1] The TWIC® is required by the Maritime Transportation Security Act for workers who need access to secure areas of the nation's maritime facilities and vessels. The Transportation Security Administration (TSA) conducts a security threat assessment (background check) to determine a person's eligibility and issues the credential. U.S. citizens and immigrants in certain immigration categories may apply for the credential. *See* www.tsa.gov/for-industry/twic

Financial Considerations[2]

Applicant and his ex-wife had an explosive relationship that deteriorated over a series of issues: he characterized her as "crazy," but he did not specify what he meant by that characterization, other than by saying that she blamed him "for a lot of stuff," not otherwise described; she was always in a bad mood; she always wanted money for prescribed pain medication; because he was frequently on the road, she took over responsibility for handling the family finances, but instead of making the proper monthly payments on certain accounts, she spent a lot of money on her children from a prior relationship to "give them a good life;" and there was a situation involving domestic violence when she repeatedly struck him with a crutch and he grabbed her throat to stop her from doing so. In addition, they went through a toxic divorce. Applicant attributed his financial difficulties to his ex-wife's actions and her misrepresentation to the divorce court about his income, resulting in his being ordered to pay her child support at a higher amount than he reasonably could afford; and her failure or refusal to take responsibility for the marital debts that she was ordered to pay, and to hold Applicant harmless for them.[3]

The Divorce Order to which Applicant referred, specifically ordered: Applicant's ex-wife was to maintain residence in the marital home until their daughter (born in May 1999) reached the age of 18½ years, at which time (the end of 2017) the property was to be appraised and sold, with Applicant receiving a specific share of the proceeds; they were to receive the personal property in their possession or control, free from any claims; they were to keep and retain their respective motor vehicles, free from any claims of the other, and hold the other party harmless from any indebtedness which may be due on their respective motor vehicles; she was to be responsible for all land contract payments, maintenance and taxes; and in the event there is indebtedness owing on any of the property, "the party receiving the said property shall discharge any and all indebtedness thereon, and hold the opposite party harmless from any and all liability."[4]

The Uniform Child Support Order, attached to the Divorce Order, specified that, effective September 1, 2012, Applicant was to pay $679 per month in child-support obligations, covering all three children, based on Applicant's purported monthly gross income of $2,251.[5] In addition, although Applicant was to have reasonable visitation rights, he contended that nearly every time he attempted to exercise those rights, his ex-wife refused to let him see the children. The Divorce Order also specified that neither

[2] General source information pertaining to the financial accounts discussed below can be found in the following exhibits: GE 1 (e-QIP, dated September 30, 2016); GE 2 (Personal Subject Interview, dated January 17, 2017); GE 3 (Combined Experian, TransUnion, and Equifax Credit Report, dated November 15, 2016); GE 4 (Equifax Credit Report, dated December 28, 2017); GE 5 (Equifax Credit Report, dated June 20, 2018); AE B (Experian Credit Report, dated July 24, 2018); AE A (Divorce Order, dated October 16, 2012); and Applicant's Answer to the SOR, dated January 25, 2018.

[3] GE 2, *supra* note 2, at 3-4, 6-7; Tr. at 27-28.

[4] AE A, *supra* note 2.

[5] AE A, *supra* note 2.

parent "shall do anything which may estrange the child from the other parent, or tend to discredit, cause disrespect or diminish the natural affection of the child for the other parent."[6] Applicant purchased school clothing for the children, and paid for his ex-wife's vehicle tires for his children's safety, and on one occasion, just to see his son, Applicant gave his ex-wife $4,000 cash, but because he failed to do so through the state's child support division, he did not receive any credit for his expenses, cash payments, or gifts.[7] Eventually, Applicant sought court protection, but all he was told was "keep trying." His unsuccessful repeated efforts to see his children over the years cost him approximately $30,000 in attorney fees, motel expenses, time-off from work, vehicle rentals, and inter-state airplane expenses.[8] Furthermore, because of his ex-wife's actions, Applicant no longer has any relationship with his children.[9] Applicant became frustrated, bitter, and angry over being denied access to his children by his ex-wife; because she had destroyed his relationship with the children; because she smoked marijuana with the children; and because of her failure to make them go to school. Applicant stopped making the child-support payments.[10] An arrearage materialized, and at one point, that arrearage balance was between $21,392 and $27,324.[11]

The SOR identified seven purportedly delinquent accounts that had been placed for collection or filed as judgments, as generally reflected by Applicant's November 2016 credit report, December 2017 credit report, or June 2018 credit report. Those debts total approximately $47,707. The current status of those accounts, is as follows.

(SOR ¶ 1.a.): This is a satellite television account with an unpaid balance of $296.[12] Applicant contended that when he and his ex-wife separated, while she was working for that particular satellite company, he cancelled the account and returned the equipment to the company. However, she restored the account in his name without his knowledge or permission. Applicant disputed the account with TransUnion in June 2018, and after an investigation, TransUnion informed him by e-mail that the debt was being removed from his credit report.[13] Applicant's June 2018 Experian credit report indicates that he disputed the account and that a reinvestigation was in progress.[14] The account has been resolved.

[6] AE A, *supra* note 2, at 4.

[7] Tr. at 64-65.

[8] Tr. at 29-30.

[9] Tr. at 94.

[10] Applicant's Answer to the SOR, supra note 2; GE 2, supra note 2, at 6.

[11] GE 3, supra note 2, at 9; AE B, supra note 2, at 9.

[12] GE 4, *supra* note 2, at 1; GE 5, *supra* note 2, at 1.

[13] Tr. at 49, 56; AE T (Dispute Result, dated July 13, 2018).

[14] GE 5, *supra* note 2, at 1.

(SOR ¶ 1.b.): This is a septic system installation or repair account on the residence where Applicant's ex-wife was residing with an unpaid balance of $1,566 that was filed as a judgment in August 2012.[15] Applicant contended that because his ex-wife remained in the residence, under the terms of the Divorce Order, she was responsible for the charges and is required to hold him harmless for the charges.[16] Applicant informed the creditor of his ex-wife's responsibility for the debt, but the creditor did not care about her responsibility, and rather than placing a lien on the property, they obtained a judgment against Appellant.[17] Applicant mailed the creditor a copy of the Divorce Order, and he is waiting for a response from the representative of the creditor.[18] While the judgment was listed in Applicant's 2016 credit report, it is not listed in any of his subsequent credit reports. Moreover, since the court ordered that Applicant's ex-wife was responsible for the charges and is required to hold him harmless for those charges, Applicant should not be held legally responsible for the debt.

(SOR ¶ 1.c.): This is a motor vehicle loan for a pickup truck (driven by Applicant's ex-wife) in the amount of $35,000 that Applicant purchased in 2001, but for which he was unable to continue making payments, so he voluntarily relinquished it to the lender in 2005. In June 2013, the lender filed a $17,653 judgment against Applicant.[19] Applicant informed the creditor of his intention to resolve the account once the marital residence is sold, but the attorneys for the lender were disinterested, and simply wanted to be paid the full amount.[20] Applicant considers the debt to be a marital debt for which both he and his ex-wife are responsible, and he intended to pay his half of the debt from the proceeds from the sale of the marital residence.[21] When Applicant spoke with the creditor on August 10, 2018, after having mailed them a copy of the Divorce Order, the representative of the creditor stated the debt would be removed from Applicant and assigned to his ex-wife.[22] Applicant did not submit any statement from the creditor to confirm what he claimed they told him. Nevertheless, while the judgment was listed in Applicant's 2016 credit report, it is not listed in any of his subsequent credit reports. Since the court ordered that Applicant's ex-wife was responsible for the charges and is required to hold him harmless for those charges, Applicant should not be held legally responsible for the debt.

[15] GE 3, *supra* note 2, at 5.

[16] Tr. at 31; GE 2, *supra* note 2, at 8.

[17] Tr. at 30-34; AE P (Postage Express Receipt, undated).

[18] AE V (Statement, undated).

[19] GE 2, *supra* note 2, at 5; GE 2, *supra* note 2, at 6, 8; GE 1, *supra* note 2, at 35-36; Tr. at 35-37.

[20] Tr. at 34-35.

[21] Tr. at 37-38.

[22] AE V, *supra* note 18; AE Q (Postage Express Receipt, undated).

(SOR ¶ 1.d.): This is a medical account with an unpaid and past-due balance of $200 that was opened in October 2012, the same month as his divorce from his ex-wife.[23] Although Applicant did not believe the account was his responsibility, when he learned about it, he paid it off.[24] However, he failed to submit any documents to support his claim that the account has been resolved.

(SOR ¶ 1.e.): This is a motor vehicle loan for a pickup truck in the amount of $10,945 that Applicant purchased for his ex-wife in 2009 or 2010. She retained the vehicle when they were divorced, and under their divorce decree, she was to maintain the vehicle and make the monthly payments. She failed to do so, and at some unspecified point in late 2016, the vehicle was involuntarily repossessed, leaving an unpaid and past-due balance of $5,487.[25] Applicant contended that because his ex-wife kept custody of the vehicle, under the terms of the divorce decree, she was responsible for the charges and is required to hold him harmless for those charges.[26]

(SOR ¶ 1.f.): This is a child-support arrearage with an unpaid balance of $21,392.[27] In mid-2015, Applicant decided to get back on track with his child-support payments, and he tried to pay the court $600 to $900 on a monthly basis to cover the current obligation of $495, along with an arrearage amount.[28] In 2017, his payments were rather sporadic.[29] But since November 2017, months before the SOR was issued, Applicant has been making regular monthly $600 child-support payments to the state, totaling $5,400.[30] The account is in the process of being resolved.

(SOR ¶ 1.g.): This is a medical account with an unpaid balance of $1,113 that was placed for collection in January 2014.[31] During his interview with an investigator from the U.S. Office of Personnel Management (OPM) in January 2017, Applicant said he knew nothing about the account, but that he would look into it and if it is his responsibility, he would set up payments to resolve it.[32] Applicant did not indicate if he has taken any

[23] GE 3, supra note 2, at 6; GE 2, supra note 2, at 8

[24] Tr. at 59-60.

[25] GE 3, *supra* note 2, at 9; GE 2, *supra* note 2, at 7; Tr. at 60-62.

[26] Tr. at 31; GE 2, *supra* note 2, at 8.

[27] GE 3, *supra* note 2, at 9; GE 2, *supra* note 2, at 6; GE 1, *supra* note 2, at 34-35.

[28] GE 1, supra note 2, at 34-35; GE 2, supra note 2, at 6; Tr. at 65-66.

[29] Tr. at 70.

[30] AE C (Payment Summary Report, dated July 24, 2018); AE S (Payment Summary Report, dated August 4, 2018).

[31] GE 3, *supra* note 2, at 10.

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

actions regarding this account, and it remains unclear if the account was opened by his ex-wife after their divorce or if the account is actually Applicant's responsibility.

As noted above, with the exception of those delinquent accounts that are legally the responsibility of his ex-wife under the Divorce Order, Applicant has indicated an intention to resolve the other accounts that are legitimately his responsibility by utilizing the proceeds from the sale of the marital residence which they purchased in July 2008. The terms of payment on the purchase of the property called for an initial payment of $23,868 in 2008; the remaining $21,368 balance to be paid in $400 monthly installments; and any remaining unpaid balance and interest to be paid within five years.[33] The Divorce Order is very specific regarding the division of the property. At some point in mid-2017, the property was to be sold and both Applicant and his ex-wife were to be entitled to equal equity based on the value stated in an appraisal conducted in June 2012, to-wit: $32,500. When the property is sold, in the event the value decreased from the date of the appraisal, Applicant was to receive not less than 90 percent of his 50 percent share of the appraised value. If there is an increase in value, Applicant was entitled to no more than his 50 percent share of the appraised value.[34]

A Real Property Transaction Record from the county register of deeds reports that, on March 27, 2017, a cash sale in the amount of $20,930, took place on a warranty deed, and the transaction was recorded on March 9, 2018, seemingly indicating that the property had been sold by Applicant's ex-wife.[35] That document is misleading. In fact, the original 2008 seller of the property granted Applicant and his ex-wife a Warranty Deed on March 27, 2017, indicating that $23,868 (the initial purchase price) had been paid, and the deed was issued in fulfillment of the 2008 land contract.[36] Applicant denied that he had any knowledge of the 2017 or 2018 transactions, that he signed any documents associated with the transactions, or that he received any funds from the transactions. Interestingly, the value of the property as of October 23, 2018, is an estimated $106,388,[37] and if true, Applicant is expected to receive over $50,000 from the proceeds of the anticipated sale of the property by Applicant and his ex-wife, a transaction that is now nearly one year past due.

Applicant submitted a Personal Financial Statement, prepared on August 18, 2018. It reflected a monthly net income of $9,039; monthly expenses of $7,924; monthly debt payments, including $600 in child support of $1,100; and a monthly remainder of $15 that might be available for discretionary spending or savings.[38] Other than the

[33] AE N (Land Contract, dated August 2, 2008).

[34] AE A, *supra* note 2, at 6.

[35] GE 6 (Real Property Transaction Record, dated July 16, 2018).

[36] AE O (Warranty Deed, dated March 27, 2017); AE M (Real Estate Summary Sheet, dated July 27, 2018).

[37] *See* Property Address at www.realtor.com/realestateandhomes-detail/

[38] AE U (Personal Financial Statement, dated August 18, 2018).

delinquent debts listed above, Applicant is not aware of any other delinquent account. There is no evidence of financial counseling. Nevertheless, Applicant has made significant progress in maintaining his finances and avoiding other more recent financial delinquencies. Once he persuades his ex-wife to comply with the Divorce Order to sell their house, he intends to address his remaining delinquent accounts to resolve them.

Character References

A number of over-the-road, long-haul owner-operator drivers have known Applicant for several years, and they characterize him in positive terms. One project manager has known Applicant for over 30 years, and he described Applicant as a hard worker and, to all that know him, Applicant is considered a very trustworthy and dependable person who displays the utmost discretion and integrity.[39] Other drivers consider Applicant as very honest, helpful, hardworking, caring, religious, and possessing a heart of gold.[40]

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."[41] 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."[42]

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

[39] AE F (Character Reference, dated July 28, 2018).

[40] AE D (Character Reference, dated July 31, 2018); AE E (Character Reference, dated July 31, 2018); AE G (Character Reference, dated July 27, 2018); AE H (Character Reference, dated July 27, 2018); AE I (Character Reference, dated July 27, 2018); AE J (Character Reference, dated July 26, 2018); AE K (Character Reference, dated July 26, 2018); AE L (Character Reference, dated July 26, 2018).

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

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

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."[43] 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.[44]

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship 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."[45]

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."[46] 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.

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[43] "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).

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

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

[46] *See* Exec. Or. 10865 § 7.

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:

> (a) inability to satisfy debts;
>
> (b) unwillingness to satisfy debts regardless of the ability to do so;
>
> (c) a history of not meeting financial obligations; and
>
> (e) consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators.

Applicant had seven purportedly delinquent accounts that had been placed for collection or filed as judgments, totaling approximately $47,707. While most of those accounts are the result of his ex-wife's failure or refusal to comply with a Divorce Order, she is legally responsible for several of those delinquent debts, and she is required to hold Applicant harmless for them. Applicant did allow his frustrations, bitterness, and anger over some of her actions, especially with respect to their three children, to get the better of him, and he stopped paying his mandated child support for a period of time. Child support arrearage rose to between $21,392 and $27,324. There is some evidence that he was unwilling to satisfy that child support obligation, but there is also no evidence that he had the ability to do so. There is no evidence of frivolous or irresponsible spending, or consistent spending beyond his means. AG ¶¶ 19(a) and 19(c) have been established, and AG ¶ 19(b) has been partially established. AG ¶ 19(e) 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;[47]
>
> (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;[48] 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.

I have concluded that ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(e) all partially or fully apply. Aside from a voluntary 2005 vehicle repossession, Applicant's financial difficulties initially arose in or about mid-2012, and they were exacerbated by his ex-wife's actions

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[47] 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. Sep. 13, 2016)).

[48] 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)).

or inaction over the ensuing years: while Applicant was on the road, she took over responsibilities for the family finances, but failed to make some routine monthly payments; and she spent money that should have been paid to creditors on her children from a previous relationship to give them a good life. After their divorce, the Divorce Order mandated that she take responsibility over certain marital debts, especially for the property that she retained, and she was to hold Applicant harmless for those accounts. She failed or refused to comply with the court mandates. Those factors, especially the post-divorce factors, were clearly beyond Applicant's control. Although he attempted to get the court involved in getting those accounts resolved, he was unsuccessful in doing so.

Applicant had two reasonable plans to resolve the delinquent marital debts. Obviously, the first plan was to have his ex-wife comply with the court mandates to pay her debts and hold Applicant harmless for them. That plan was a disaster, for she simply failed or refused to do so. The second plan was for the marital residence to be sold under the court mandate by mid-2017, and he would take the proceeds from his share of the sale to pay his remaining debts. To date, that plan is still on hold, pending Applicant's ex-wife's actions in complying with the court-mandate. Nevertheless, Applicant has made significant strides in addressing his child support arrearage, starting to do so well before the SOR was issued.

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.

While there is no evidence that Applicant received financial counseling, Applicant has made significant progress in stabilizing his finances and avoiding other more recent financial delinquencies. With a current monthly remainder of $15 that might be available for discretionary spending or savings, Applicant's finances appear to be under better control than they were when he was married to his ex-wife. When confronted with the issues that caused the marital financial problems, and faced with insufficient funds to immediately remedy the situation by himself, Applicant relied on the court system to assist him in resolving those debts. To date, his ex-wife has ignored her court-mandated responsibilities. At the same time, with his available finances, Applicant has been complying with his court-mandated responsibilities, especially pertaining to his child support obligations.[49] Once the former marital home is sold, he intends to focus on his

[49] "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. 990462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd.

few remaining delinquent accounts to resolve them.[50] Applicant's actions under the circumstances no longer cast doubt on his current reliability, trustworthiness, and good judgment.[51]

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.[52]

There is some evidence against mitigating Applicant's conduct. Although Applicant's credit reports reflect a number of delinquent accounts that had been placed for collection or filed as judgments, totaling approximately $47,707, his personal legal responsibility, according to the Divorce Order covers a portion of the judgment on the 2005 vehicle repossession and the child support arrearage that commenced when he stopped making child-support payments. There is a possibility that he may also be responsible for two medical accounts that arose at about the time he was divorced or some time thereafter.

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.

[50] 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)).

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

[52] *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).

The mitigating evidence under the whole-person concept is more substantial. Applicant is a 45-year-old contract employee of a defense contractor, serving as an over-the-road truck driver or owner-operator with a series of different employers since 2006. He was granted a TWIC® in 2010. While his ex-wife has ignored her court-mandated responsibilities, Applicant has been complying with his court-mandated responsibilities, especially pertaining to his child support obligations. Since November 2017, he has paid $5,400 in current child support and child support arrearage.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:[53]

> 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 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 fair-to-good track record of debt reduction and elimination efforts, addressing the debts for which he is responsible, limited only by insufficient funds, and lining up the remaining debt(s) for eventual resolution. Overall, the evidence leaves me without substantial 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

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

Subparagraphs 1.a. through 1.g.: 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