



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-04173

Appearances

For Government: Tara R. Karoian, Esquire, Department Counsel

For Applicant: *Pro se*

10/03/2018

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding financial considerations. Eligibility for a security clearance is denied.

Statement of the Case

On July 13, 2016, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application. On an unspecified date, the Defense Office of Hearings and Appeals (DOHA) issued him a set of interrogatories. He responded to those interrogatories on February 7, 2018. On February 23, 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.

It is unclear when Applicant received the SOR as there is no receipt in the case file. In a sworn statement, dated March 19, 2018, Applicant responded to the SOR and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the Government's file of relevant material (FORM) was mailed to Applicant by DOHA on May 22, 2018, and he was afforded an opportunity, within a period of 30 days after receipt of the FORM, to file objections and submit material in refutation, extenuation, or mitigation. In addition to the FORM, Applicant was furnished a copy of the Directive as well as the Adjudicative Guidelines applicable to his case. Applicant received the FORM on June 4, 2018. His response was due on July 4, 2018. Applicant timely submitted several documents in response to the FORM, and they were admitted as Applicant exhibits without objection. The case was assigned to me on September 11, 2018.

Findings of Fact

In his Answer to the SOR, Applicant admitted with comments nearly all of the factual allegations pertaining to financial considerations of the SOR (SOR ¶¶ 1.a., 1.b., 1.d. through 1.l., 1.n., and 1.o.). 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 41-year-old employee of a defense contractor. He has been serving as an information assurance analyst (cybersecurity) with his current employer since May 2017. A 1995 high school graduate, he received a bachelor's degree in 2014, and professional certifications in 2017. Applicant enlisted in the U.S. Army in May 1996, and he was honorably retired with the rank of sergeant first class (E-7) in May 2017. He was granted a secret clearance on an unspecified date. Applicant was married in 2001, and divorced in 2011. He remarried in 2011, and divorced in 2016. He has two daughters, born in 2005 and 2014.

Military Record

Although Applicant spent two decades in the U.S. Army, he furnished very little information regarding his military career. He submitted no information regarding awards and decorations that he received for his service. During his interview with an investigator from the U.S. Office of Personnel Management (OPM) on February 7, 2017, he reported that he had been deployed to: Iraq from December 2006 until an unspecified date in 2007; to Iraq from March 2009 until September 2009; Iraq from May 2010 until May 2011; and Afghanistan from March 2012 until December 2012.

Financial Considerations¹

Applicant attributed his financial problems to a variety of causes: his two divorces were expensive with regard to attorney fees; child support for two children located in separate states; the failure of his home mortgage lender to defer his payments while he was deployed; and the failure of the home mortgage lender to reduce his home mortgage finance rate of 6.5 per cent. As a result, he fell behind in his payments. In an effort to resolve his mortgage problems, Applicant claimed he engaged the services of a company (company A) to negotiate a lower monthly payment with the mortgage lender, and he purportedly paid them \$1,000 to accomplish the task. Applicant claimed the company did not enter into any negotiations with the mortgage lender, and the relationship ended without success. Although Applicant discussed the relationship with the company, he failed to submit any documents, including correspondence, engagement agreement, checks, or receipts, to confirm his claim, or the dates of the relationship.

In August 2016, Applicant turned to a law firm (law firm B) to address his mortgage problems by seeking a mortgage modification. Upon the completion of making four payments of \$800 each, commencing on September 1, 2016, and ending on December 2016, the law firm was to commence negotiations on the modification. Although Applicant submitted a copy of the signed engagement agreement, he failed to say that he followed through on the agreement, or made any of the agreed payments. Despite being requested to provide documentation by the OPM investigator, he failed to submit correspondence, checks, or receipts, to confirm that the agreement was consummated and any activity on his behalf was commenced.

At some point before Applicant met with the OPM investigator in February 2017, he changed directions from working with law firm B and moved to a different organization (company C) in an effort to consolidate his debts. At the same time, he contended he was searching for still another organization (company D) to work on his finances. On March 1, 2018, Applicant agreed to pay company D \$850 for their services. Essentially what company D did was to dispute numerous delinquent accounts with the credit reporting agencies and seek their deletion without expressing any justifications for such actions. Aside from a company D Credit Consulting Agreement and an e-mail company D sent to Applicant on June 21, 2018, reflecting those actions, Applicant failed to submit any documents, including correspondence, engagement agreements, reports, checks, or receipts, to confirm his contentions, the dates of those relationships, or final credit reporting agency actions. When he spoke to the OPM investigator in April 2017, Applicant noted that in addition to the delinquent accounts that he previously summarily mentioned in his e-QIP, there were two federal income tax issues for the tax years 2013 and 2014.

When Applicant completed his e-QIP in July 2016, he reported a number of delinquent accounts, and reported that he was working with company's C and D. He also

¹ General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 3 (e-QIP, dated July 13, 2016); Item 4 (Answers to Interrogatories, dated February 7, 2018); Item 4 (Personal Subject Interview, dated February 7, 2017); Item 4 (Personal Subject Interview, dated April 4, 2017); Item 6 (Combined Experian, TransUnion, and Equifax Credit Report, dated July 27, 2016); and Item 5 (Equifax Credit Report, dated November 1, 2017).

contended that his financial issues started in December 2011, despite clear evidence in his credit reports that several of his delinquent accounts were charged off in 2010, with one account charged off in 2006. When the investigator questioned Applicant regarding various delinquent accounts, Applicant openly discussed some of them and the reasons why he had fallen behind in making payments, and he claimed to have no knowledge of other accounts. He indicated that he would look into some of the accounts and seek repayment arrangements.²

In addition to Applicant's failure to timely pay his federal income taxes for the tax years 2013 and 2014, the SOR identified 13 purportedly delinquent accounts that had been placed for collection, charged-off, or past due, as reflected by Applicant's 2016 or 2017 credit reports. Those debts, totaling approximately \$163,181, are described below:

(SOR ¶ 1.a.): This is an automobile loan with a past-due and unpaid balance of \$8,103 that was charged off.³ Applicant claimed his ex-wife was ordered to pay the balance, but she failed to do so. Applicant disputed the account with the credit-reporting agency seeking to have the account deleted from his credit report. Nevertheless, in his response to the SOR, Applicant stated he would make monthly payments of \$10 or more to resolve the account. Despite his claim regarding legal responsibility for the account, and his promise to make payments, Applicant submitted no documents, such as the court order, cancelled checks, receipts, etc., to support his claims. The account has not been resolved.

(SOR ¶ 1.b.): This is a personal bank loan with a balance of \$7,925 that was charged off in April 2006.⁴ Applicant claimed that he had reached out to the collection agent to establish repayment options, but they were not acceptable to the collection agent. He was advised to contact the creditor. Applicant disputed the account with the credit-reporting agency seeking to have the account deleted from his credit report. Applicant submitted no documents to support any resolution efforts or to reflect any payments by him. The account has not been resolved.

(SOR ¶ 1.c.): This is an installment sales contract with a balance of \$1,696 that was charged off in February 2016.⁵ Applicant claimed that the account was unknown to him. He disputed the account with the credit-reporting agency seeking to have the account deleted from his credit report. The account has not been resolved.

² 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)).

³ Item 5, *supra* note 1, at 2.

⁴ Item 6, *supra* note 1, at 6; Item 5, *supra* note 1, at 2.

⁵ Item 6, *supra* note 1, at 7; Item 5, *supra* note 1, at 2.

(SOR ¶ 1.d.): This is a bank-issued credit card with a balance of \$954 that was charged off.⁶ Applicant contended that he paid the account in full, but he failed to submit any documents, such as canceled checks, bank registers, or receipts, to support his contention. He also disputed the account with the credit-reporting agency seeking to have the account deleted from his credit report. In the absence of documentation reflecting otherwise, I must conclude that the account has not been resolved.

(SOR ¶ 1.e.): This is a bank-issued credit card with a balance of \$73 that was charged off.⁷ Applicant contended that he paid the account in full, but he failed to submit any documents, such as canceled checks, bank registers, or receipts, to support his contention. He also disputed the account with the credit-reporting agency seeking to have the account deleted from his credit report. In the absence of documentation reflecting otherwise, I must conclude that the account has not been resolved.

(SOR ¶ 1.f.): This is a credit union account reported by the credit reporting agency as an automobile loan, but claimed by Applicant to be a credit card, with a balance of \$11,987 that was charged off in May 2010.⁸ Applicant claimed his ex-wife was ordered to pay one-half of the balance, but she failed to do so. He stated that he contacted the creditor to work out a resolution. He also disputed the account with the credit-reporting agency seeking to have the account deleted from his credit report. Despite his claim regarding legal responsibility for the account, and his professed efforts to resolve the account, Applicant submitted no documents, such as the court order, cancelled checks, receipts, etc., to support his claims. The account has not been resolved.

(SOR ¶ 1.g.): This is a credit union-issued credit card claimed by Applicant to be the same credit card as the account in SOR ¶ 1.f., with a balance of \$10,922 that was charged off in August 2010.⁹ Applicant claimed the account was listed in his credit report by error. He disputed the account with the credit-reporting agency seeking to have the account deleted from his credit report. Despite his claim regarding legal responsibility for the account, or that the account was a duplicate of the other credit union account, Applicant submitted no documents to support his claims. The account has not been resolved.

(SOR ¶ 1.h.): This is a credit union automobile loan with a balance of \$4,990 that was charged off in December 2010.¹⁰ Applicant contended that he had an automobile accident in 2011, and that he had Guaranteed Auto Protection (GAP) insurance,¹¹ but

⁶ Item 5, *supra* note 1, at 2.

⁷ Item 5, *supra* note 1, at 2.

⁸ Item 6, *supra* note 1, at 6.

⁹ Item 6, *supra* note 1, at 6.

¹⁰ Item 6, *supra* note 1, at 7.

¹¹ GAP insurance is the difference between the actual cash value of a vehicle and the balance still owed on the financing.

that the lender disputed the coverage. He disputed the account with the credit-reporting agency seeking to have the account deleted from his credit report. Nevertheless, in his response to the SOR, Applicant stated he was seeking to enter into negotiations with the creditor to arrive at a settlement. Applicant submitted no documents, such as his loan papers with references to GAP coverage, letters, a repayment agreement, cancelled checks, receipts, etc., to support his claims. In the absence of documentation reflecting otherwise, I must conclude that the account has not been resolved.

(SOR ¶ 1.i.): This is an unspecified type of credit union account with a past-due and unpaid balance of \$2,619.¹² Applicant claimed that the account was unknown to him. He disputed the account with the credit-reporting agency seeking to have the account deleted from his credit report. The account has not been resolved.

(SOR ¶ 1.j.): This is a charge account with a balance of \$2,774 that was charged off in May 2010.¹³ Applicant claimed he used the card for an unexpected expense in 2011. He also contended that he entered into an installment agreement on an unspecified date, and that he was making payments of \$133.79, without mentioning the frequency of such payments. Applicant submitted no documents, such as an installment agreement, letters, cancelled checks, receipts, etc., to support his claims. In the absence of documentation reflecting otherwise, I must conclude that the account has not been resolved.

(SOR ¶ 1.k.): This is a home mortgage loan – obtained in 2005 – with a balance of \$193,349, of which \$107,573 was past due.¹⁴ Applicant claimed he has been in various discussions with the lender for several years in an effort to obtain either a loan modification or a repayment plan, and that the lender has refused to accept any payments until such time as either a loan modification or a repayment plan is accepted. The lender addressed Applicant's concerns for relief under the Civil Relief Act (SCRA) in March 2012; September 2013; October 2015; November 2015; December 2015; and January 2016, but he was repeatedly informed that his mortgage loan was not eligible for service member interest rate and fee benefits under SCRA because his loan originated while he was on active duty.¹⁵ Unhappy with the results of his efforts, Applicant filed a complaint with the U.S. Consumer Financial Protection Bureau in early 2018. Applicant also indicated that he had listed the residence – in which he still resides – for rent. Other than the one 2018 letter from the lender, Applicant submitted no other documents, such as loan modification applications, SCRA applications, letters, or escrow deposits, etc., to support his loan modification efforts, his relationship with a realtor, or his plans to repay the past-due amount. The account has not been resolved.

¹² Item 6, *supra* note 1, at 7.

¹³ Item 6, *supra* note 1, at 8.

¹⁴ Item 6, *supra* note 1, at 8.

¹⁵ Item 2 (Letter, dated March 7, 2018, attached to Applicant's Answer to the SOR).

(SOR ¶ 1.l.): This is a cellular telephone account with an unpaid balance of \$460.¹⁶ Applicant claimed his ex-wife was ordered to pay the balance, but she failed to do so. Applicant disputed the account with the credit-reporting agency seeking to have the account deleted from his credit report. Nevertheless, in his response to the SOR, Applicant stated he would be willing to negotiate payment options to resolve the account. Despite his claim regarding legal responsibility for the account, and his promise to make payments, Applicant submitted no documents, such as the court order, cancelled checks, receipts, etc., to support his claims. The account has not been resolved.

(SOR ¶ 1.m.): This is a medical account with an unpaid balance of \$155.¹⁷ Applicant claimed that the account was unknown to him, and indicated that it may be related to one of the other listed accounts, but he did not explain why or to which account. He disputed the account with the credit-reporting agency seeking to have the account deleted from his credit report. The account has not been resolved.

(SOR ¶¶ 1.n. and 1.o.): These are federal income taxes owed to the Internal Revenue Service (IRS) in the amounts of \$1,135 (for the tax year 2014) and \$1,815 (for the tax year 2015). With respect to the 2014 income taxes, Applicant established an installment agreement in March 2016, but that agreement terminated in January 2017. It was reestablished in February 2017, only after a notice of intent to levy was issued. The agreement lapsed in December 2017. During 2015-17, Applicant was credited with some minor payments, as well as the attachment of a refund from his 2016 income taxes. A levy was issued on January 8, 2018. As of January 22, 2018, Applicant had an unpaid balance of \$1,135.57.¹⁸ Applicant stated that the balance would be resolved when he receives his refund for the 2017 federal income tax return. On April 15, 2018, \$1,168.39 from that refund was transferred to his 2014 balance.¹⁹ The account has been resolved.

With respect to the 2015 income taxes, Applicant established an installment agreement in May 2016, but that agreement terminated in January 2017. It was reestablished in February 2017, only after a notice of intent to levy was issued. The agreement lapsed in December 2017. During 2016-17, Applicant was credited with some minor payments. A levy was issued on January 8, 2018. As of January 15, 2018, Applicant had an unpaid balance of \$1,815.93.²⁰ Applicant stated that the balance would be resolved when he receives his refund for the 2017 federal income tax return. On April 15,

¹⁶ Item 6, *supra* note 1, at 14.

¹⁷ Item 6, *supra* note 1, at 4.

¹⁸ Item 4 (IRS Account Transcript (2014), dated January 22, 2018, attached to Applicant's Responses to the Interrogatories).

¹⁹ IRS Account Transcript (2017), dated June 22, 2018, submitted in response to the FORM.

²⁰ Item 4 (IRS Account Transcript (2015), dated January 22, 2018, attached to Applicant's Responses to the Interrogatories).

2018, \$1,879.50 from that refund was transferred to his 2015 balance.²¹ The account has been resolved.

For his 2017 federal income tax return, Applicant claimed four exemptions with a filing status as married, but he was no longer married in 2017. He reported an adjusted gross income of \$69,327, and a taxable income of \$40,427.²² Although Applicant indicated that he is able to live within his means regarding current expenses, he is unable to address all of his delinquent debt. It is not known what Applicant's current financial resources may be because he did not submit a Personal Financial Statement to reflect his net monthly income; monthly expenses; and any monthly remainder that might be available for discretionary spending or savings. There is no evidence of a budget. There is no evidence of any financial counseling other than to assist him in disputing most of his delinquent accounts to have them deleted from his credit report. Other than his own statement, Applicant offered no meaningful evidence to indicate that his financial situation is now under control.

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."²³ 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."²⁴

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,

²¹ IRS Account Transcript (2017), *supra* note 19.

²² IRS Account Transcript (2017), *supra* note 19.

²³ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

²⁴ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

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.”²⁵ 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.²⁶

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.”²⁷

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.”²⁸ 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.

²⁵ “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).

²⁶ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

²⁷ *Egan*, 484 U.S. at 531.

²⁸ 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
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

In addition to unpaid federal income taxes for the tax years 2014 and 2015, Applicant had 13 other delinquent debts, totaling approximately \$163,181, placed for collection, charged-off, or past due. There is some evidence that Applicant was unwilling to satisfy his debt regardless of the ability to do so. AG ¶¶ 19(a), 19(b), 19(c), and 19(f) have 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;²⁹

(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;³⁰

(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; and

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

AG ¶ 20(b) partially applies, but none of the remaining mitigating conditions apply. The nature, frequency, and recency of Applicant's continuing financial difficulties make it difficult to conclude that it occurred "so long ago" or "was so infrequent," or that it is

²⁹ 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)).

³⁰ 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)).

“unlikely to recur.” Applicant generally attributed his financial difficulties to several separate factors: his two divorces were expensive with regard to attorney fees; child support for two children located in separate states; the failure of his home mortgage lender to defer his payments while he was deployed; and the failure of the home mortgage lender to reduce his home mortgage finance rate of 6.5 per cent. However, despite Applicant’s contention that his financial problems started in 2011 when the first divorce occurred, there is clear evidence in his credit reports that several of his delinquent accounts were charged off in 2010, with one account charged off as early as 2006.

While Applicant claimed to have insufficient funds to maintain his accounts in a current status over the years, he failed to submit documentation related to a number of those factors. Briefly commenting on those factors is insufficient proof of same. Applicant seems to have made significant and costly efforts to dispute his accounts with the various credit reporting agencies in an effort to have those accounts – even one for \$73 – deleted from his credit reports. There is little evidence to reflect good-faith efforts on his behalf to engage his creditors and collection agents; to negotiate repayment agreements; or to resolve his debts. Other than attempting to delete his accounts from his credit reports, with the exception of his federal income taxes, and his unsubstantiated claims of having made some payments to various creditors, evidence of positive good-faith efforts is missing. There is no evidence of meaningful financial counseling; no evidence of an overall repayment plan; and no evidence of a budget.

With regard to the only two accounts for which there is evidence of resolution, the two federal income tax deficiencies, Applicant entered into several installment agreements, permitted them to lapse, seemingly without payments, and reestablished installment agreements only after notices of intent to levy were issued. Those two accounts were finally resolved when Applicant’s refunds from the tax year 2017 were applied to them.

It is not known what Applicant’s financial resources may be because he did not submit a Personal Financial Statement to reflect his net monthly income; monthly expenses; and any monthly remainder that might be available for discretionary spending or savings. Applicant offered no meaningful evidence to indicate that his financial situation is now under control. Applicant’s actions under the circumstances cast doubt on his current reliability, trustworthiness, and good judgment.³¹

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

³¹ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

resolution of such issues, one at a time. Seemingly ignoring debts with the anticipation that they will disappear from one's credit report is not evidence of a good-faith effort to resolve those debts. Mere promises to pay debts in the future, without further confirmed action, are insufficient.

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.³²

There is some evidence mitigating Applicant's conduct. Applicant is a 41-year-old employee of a defense contractor. He has been serving as an information assurance analyst (cybersecurity) with his current employer since May 2017. Applicant enlisted in the U.S. Army in May 1996, and he was honorably retired with the rank of sergeant first class (E-7) in May 2017. He was granted a secret clearance on an unspecified date. During his two decades in the U.S. Army, Applicant was deployed to Iraq on three occasions, and to Afghanistan on one occasion.

The disqualifying evidence under the whole-person concept is more substantial. Although it is now mid-to-late 2018, Applicant failed to submit meaningful evidence (documentation) of a good-faith effort to resolve his debts – some of which were charged off in 2010 or before. During the entire period, Applicant was employed. He seemingly ignored most of his debts – even the one for \$73 – choosing instead to dispute them, not resolve them. Because of his failure to submit documentation or information regarding his current finances, or his planned efforts to resolve his outstanding debts, his financial situation is unknown. Considering the lack of evidence regarding his current finances, I

³² 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).

am unable to reach a positive conclusion pertaining to Applicant's eligibility for a security clearance.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:³³

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 an extremely poor track record of debt reduction and elimination efforts, seemingly avoiding nearly all of the debts in his name. Overall, the evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has failed to mitigate 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:	AGAINST APPLICANT
Subparagraphs 1.a. through 1.o.:	Against Applicant

³³ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

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

ROBERT ROBINSON GALES
Administrative Judge