



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



In the matter of:)
)
 ---) ISCR Case No. 18-01663
)
 Applicant for Security Clearance)

Appearances

For Government: Ross Hyams, Esquire, Department Counsel
For Applicant: *Pro se*

12/03/2018

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 February 8, 2017, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application. On June 25, 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) *National Security Adjudicative Guidelines* (AG) (December 10, 2016), 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 July 3, 2018. In a sworn statement, dated July 20, 2018, Applicant responded to the SOR and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on August 9, 2018. The case was assigned to me on August 16, 2018. A Notice of Hearing was issued on August 30, 2018. I convened the hearing as scheduled on September 27, 2018.

During the hearing, Government exhibits (GE) 1 through GE 5, Applicant exhibits (AE) A through AE X, and Administrative exhibit I, were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on October 5, 2018. I kept the record open to enable Applicant to supplement it. He took advantage of that opportunity and timely submitted additional documents, which were marked and admitted as AE Y through AE AJ, without objection. The record closed on October 31, 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. through 1.c., 1.e. through 1.k., and 1.m.). 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 44-year-old employee of a defense contractor. He has been serving as a project manager with his employer since August 2008. On September 25, 2018, he was issued a notice that, because the company was unsuccessful in competing for a particular contract, effective December 31, 2018, his position was being permanently eliminated and he was being laid off. He is also the recipient of a September 2018 job offer requiring a security clearance from a different employer. He is a 1992 high school graduate. Applicant earned a number of college and vocational credits, but he has no degree. He enlisted in the U.S. Air Force in October 1996, and served on active duty until October 2000, when he was honorably discharged. He transitioned first to the state Air National Guard (ANG), then to the U.S. Air Force Reserve, and back to the ANG. He was discharged in July 2014 as a senior airman (E-4) with a general discharge under honorable conditions for unsatisfactory participation.¹ He was granted a secret clearance

¹ AE B (Certificate of Release or Discharge from Active Duty (DD Form 214), dated October 15, 2000); AE B (Report of Separation and Record of Service (NGB Form 22 EF), dated September 24, 2015); AE B (General Discharge Certificate, dated July 13, 2014). The unsatisfactory performance was associated to his medical health (bad knees) and dental health (bad teeth) issues that made him non-deployable and, because they were not considered to be military service related, he was personally required to pay for the

in 1997 and again in 2007. Applicant was married in 2002. He has two step-children, born in 1990 and 1997, and is the court-appointed guardian of a minor granddaughter born in 2008.

Military Awards and Decorations

During his military service, Applicant was awarded the Air Force Training Ribbon, the Air Force Good Conduct Medal (two awards), the Air Force Longevity Service Award Ribbon, and the Air Force Outstanding Unit Award.

Financial Considerations²

It is unclear as to when Applicant's financial problems first arose, although there were some state tax liens filed as early as October 2007, July 2008, and April 2011. Applicant attributed his financial difficulties to his ill and eventually deceased parents (his father suffered a heart attack and a stroke in 2006, was placed in a nursing home, and passed away in December 2007; and his mother was afflicted with mesothelioma, taken into Applicant's residence because Medicare would not cover certain costs, and she passed away in December 2008) because he was helping them financially with their medical and nursing home bills; his wife had health issues that prevented her from working for a non-specific period; Applicant encountered a relatively brief period of unemployment; his stepson fathered a child with dyslexia out of wedlock, and Applicant provided some financial aid to the child's mother; and he had encountered difficulties in dealing with one particular mortgage company. Faced with increased expenses and decreased family income, and wishing to remain financially responsible in meeting his commitments, in late 2014, Applicant sought professional guidance from an attorney.

On November 3, 2014, Applicant individually filed for bankruptcy under Chapter 13 of the U.S. Bankruptcy Code. When Applicant's attorney urged him to include his wife as a petitioner, Applicant was reluctant to do so to avoid over-extending his payments and possibly impacting his wife's credit. That attorney withdrew from the case, and successfully moved for \$1,318.45 in compensation. The bankruptcy was dismissed on March 16, 2015.³ On June 1, 2015, after engaging the professional services of another attorney, and intending to persuade a particular mortgage company to work with him on a payment plan on his residence, he filed another individual petition for bankruptcy under Chapter 13. Prior to the hearing date, Applicant's new attorney also advised him to include

repairs while at his civilian job, something he could not afford to do either financially or time-wise. See Tr. at 75-78.

² General source information pertaining to the financial accounts discussed below can be found in the following exhibits: GE 1 (e-QIP, dated February 8, 2017); GE 2 (1st Personal Subject Interview, dated July 20, 2017); GE 2 (2nd Personal Subject Interview, dated February 15, 2018); GE 2 (3rd Personal Subject Interview, dated April 2, 2018); GE 3 (Combined Experian, TransUnion, and Equifax Credit Report, dated June 16, 2017); GE 4 (Equifax Credit Report, dated May 14, 2018); GE 5 (Chapter 13 Bankruptcy Petitions, various dates); and Applicant's Answer to the SOR, dated July 20, 2018.

³ GE 5 (Order of Dismissal, dated March 16, 2015).

his wife in the proceeding, but again Applicant chose not to do so. The bankruptcy was dismissed on September 1, 2015.⁴ On October 29, 2015, with the assistance of a third attorney, Applicant again filed an individual petition for bankruptcy under Chapter 13, essentially to save his house from foreclosure. He listed one real property with a current value of \$165,000 (with a secured claim of \$191,817); \$211,759 in creditors holding secured claims (including the mortgage); \$750 in creditors holding unsecured priority claims; and \$81,844 in creditors holding unsecured nonpriority claims. At the time, his monthly income was \$6,555.49, and his monthly expenses were \$5,387.33. It was also anticipated that he would make debt payments totaling \$2,049.70, an amount which he would be unable to pay under the proposed bankruptcy plan, because it would leave him with a monthly deficit of \$881.54.⁵ When the mortgage company initially informed Applicant's U.S. Department of Veterans Affairs (VA) loan officer that it would agree to refinance his existing mortgage at a lower rate if he cancelled his then-current payment plan, enabling Applicant to meet all the other existing obligations, Applicant agreed to the mortgage company's offer. However, when the mortgage company went ahead with the foreclosure, Applicant saw no need to proceed with the bankruptcy, and the process was dismissed on January 8, 2016.⁶

Applicant completed credit counseling in 2014 and 2015 as a prerequisite for his bankruptcy filings.⁷

In addition to the three bankruptcy filings, the SOR identified ten purportedly delinquent accounts that had been placed for collection, filed as tax liens, or foreclosed, as generally reflected by Applicant's June 2017 or May 2018 credit reports. Those debts, not including the foreclosure, total approximately \$7,719. The current status of those accounts is as follows:

(SOR ¶ 1.d.): This is a mortgage loan with a high credit of \$177,586 that was foreclosed in November 2015.⁸ Applicant reached out to the creditor to participate in their payment plan to ensure payments were made on time and to catch up on any arrears. Payments were being made until there were insufficient funds to continue doing so. When the U.S. Department of Veterans Affairs (VA) loan officer discussed the process with the creditor and Applicant, the creditor representative indicated that to be considered for a VA refunding of the loan, the current payment plan would have to be cancelled before applying for the new one. Following the guidance received, Applicant cancelled the payment plan and submitted an application for the new payment plan. The creditor reneged when it denied Applicant's new application, claiming that it was at their discretion

⁴ GE 5 (Order of Dismissal, dated September 1, 2015).

⁵ GE 5, *supra* note 2.

⁶ GE 5 (Order Dismissing Voluntary Petition, dated January 8, 2016).

⁷ AE I (Certificate of Counseling, dated October 28, 2014); GE 5, *supra* note 2.

⁸ GE 3, *supra* note 2, at 8; GE 4, *supra* note 2, at 1; AE M (E-mail Stream, various dates); Applicant's Answer to the SOR, *supra* note 2, at 1-2.

as to whether a new payment plan would be approved.⁹ While there was a foreclosure, there is no evidence of any deficiency. The account has been resolved.

(SOR ¶ 1.e.): This is a charge account with a \$3,650 credit limit with a past-due and unpaid balance of \$2,549 that was placed for collection.¹⁰ The account became delinquent when Applicant left the ANG and the automatic payments on the account stopped. The balance was reduced to \$1,222.47 by June 2018.¹¹ Applicant set up a payment plan with the creditor calling for preauthorization for recurring transfers from his account in the amount of \$241 per month for six months, at which time the balance would be reduced to zero.¹² To date, there should be two completed preauthorized payments. The account is in the process of being resolved.

(SOR ¶ 1.f.): This is a satellite television account with an unpaid balance of \$309.57 that was placed for collection when Applicant relocated from his residence to an apartment and cancelled the account.¹³ Applicant contacted the collection agent and reached a settlement calling for a reduced balance of \$154.79. He made that payment on September 6, 2018.¹⁴ The account has been resolved.

(SOR ¶¶ 1.g. and 1.h.): These are two bank-issued credit-card accounts with unpaid balances of \$499 and \$298 that were placed for collection and sold to a debt purchaser.¹⁵ Applicant and the debt purchaser agreed to payment plans for each account under which Applicant agreed to pay approximately \$50 and \$85 every other pay period per month, commencing in October 2018.¹⁶ The initial payments were posted on October 15, 2018.¹⁷ Both accounts are in the process of being resolved.

⁹ Applicant's Answer to the SOR, *supra* note 2, at 1-2.

¹⁰ GE 3, *supra* note 2, at 8; GE 4, *supra* note 2, at 2.

¹¹ AE W (Account Statement, dated June 13, 2018).

¹² Answer to the SOR, *supra* note 2, at 2; AE Y (Statement, dated October 30, 2018); AE AE (Payment Agreement, dated October 24, 2018).

¹³ GE 3, *supra* note 2, at 20; GE 4, *supra* note 2, at 2; Applicant's Answer to the SOR, *supra* note 2, at 2.

¹⁴ AE Y, *supra* note 12; AE N (Cancelled Check, dated September 6, 2018); AE AG (Transaction Details, dated October 29, 2018); Tr. at 50-51.

¹⁵ GE 3, *supra* note 2, at 20; GE 4, *supra* note 2, at 2.

¹⁶ AE Y, *supra* note 12, at 1; AE O (Gmail, dated September 12, 2018); AE P (Gmail, dated September 12, 2018).

¹⁷ AE AA (Transaction Details, dated October 29, 2018); AE AB (Transaction Details, dated October 29, 2018).

(SOR ¶¶ 1.i., 1.j., and 1.k.): These are three state tax liens filed against Applicant in the same county superior court in October 2007, July 2008, and April 2011.¹⁸ They arose because Applicant had issues with his exemptions. Applicant went to the courthouse and met with the clerk, to whom he referred as the recording technician, and requested all liens associated with his name and the record number. Only one such lien was found and retrieved, and that was the 2008 lien for \$474.¹⁹ He paid that amount to the tax division on October 19, 2018.²⁰ Applicant inquired as to the other liens, and he asked if they were filed against the property that was foreclosed, but without additional information in the court files, the clerk was unable to provide any answers. Applicant was referred to the state department of revenue (DOR), but he has not received any answers to his inquiries to the DOR.²¹

None of the tax liens are listed in Applicant's 2018 credit report. Under the laws of the state, tax liens are required to be filed within seven years of the assessment if the assessment was issued before February 21, 2018. A lien cannot be renewed. If ownership of property changes, the lien is attached to the property until it is resolved. When the property is sold (or foreclosed), the lien attaches to the proportionate proceeds from the sale.²² In addition, it appears that the Internal Revenue Service (IRS) applied Applicant's 2017 federal income tax refund of \$1,990 to a past due obligation "such as child support, another federal agency debt, or state income tax."²³ Applicant has made reasonable efforts to track down the tax liens, but to date, his efforts have failed to turn up the two "missing" liens. As to the 2008 tax lien, that lien has been resolved. As to the 2007 and 2011 tax liens, it appears safe to conclude that they were resolved either by the foreclosure, the federal income tax refund, or a combination of the two.

(SOR ¶ 1.l.): This is an individual charge account (in Applicant's mother's name with Applicant as an authorized user) for an automotive center with an unpaid balance of \$1,467 that was placed for collection.²⁴ Applicant approached the creditor to advise it of his mother's death and indicated that he would be making payments. The creditor placed the account in Applicant's name because he had previously used the account.²⁵ Applicant set up a payment plan with the collection agent calling for preauthorization for recurring transfers from his account in the amount of \$150 per month. The initial payment was

¹⁸ GE 3, *supra* note 2, at 6.

¹⁹ AE AH (State Tax Execution, dated June 9, 2008); AE Y, *supra* note 12, at 1.

²⁰ AE AI (Transaction Details, dated October 29, 2018).

²¹ AE Y, *supra* note 12, at 1. AE Y, *supra* note 12, at 1.

²² [https://dor.\[state in issue\].gov/liens](https://dor.[state in issue].gov/liens)

²³ AE AF (Refund Status Results, dated October 7, 2018).

²⁴ GE 3, *supra* note 2, at 20.

²⁵ Tr. at 53-55.

made, and as of October 30, 2018, the outstanding balance had been reduced to \$1,316.74.²⁶ The account is the process of being resolved.

(SOR ¶ 1.m.): This is an annual amusement park pass for \$275 with an unpaid balance of \$84.62 that was placed for collection.²⁷ Applicant's automatic monthly payments were routinely withdrawn from a particular debit card that was eventually compromised. When the card was cancelled and a replacement issued, the payments ceased, leaving that relatively modest amount.²⁸ Applicant paid the collection agent \$84.62, and as of October 16, 2018, there is a zero balance.²⁹

Following the guidance of his facility security officer, Applicant addressed various accounts that were not alleged in the SOR.³⁰ Other than the accounts alleged in the SOR, Applicant is not aware of any other delinquent accounts. Now that the unanticipated expenses associated with his parent's issues and his wife's illness and unemployment have disappeared, and he has been approved for a monthly VA disability award of \$2,171.68,³¹ he has made significant progress in stabilizing his finances and avoiding other financial delinquencies. In October 2018, Applicant prepared a Personal Financial Statement indicating his monthly income, expenses, and debt payments. He reported \$7,861 in combined family net income; \$5,759 in monthly expenses and debt payments; and a monthly remainder of \$2,102 that might be available for discretionary spending or savings.³² With Applicant's long-term efforts to restore fiscal responsibility, the soon-to-be-completed payments under the structured payment plans, and his increasing monthly remainder, Applicant's financial situation is now under control.

Character References

A retired colonel who is the former site manager and current principal program manager at the largest training military installation in the world associated with the systems with which Applicant works, considers Applicant to be the "finest individual I have known or served with in and out of the military." As the deputy site manager, Applicant displayed dedication and professionalism, combined with limitless enthusiasm and initiative. Applicant's technical acumen, natural leadership skills and sound decision making abilities are unmatched. Furthermore, Applicant possesses the enviable ability to

²⁶ AE AC (Receipt, dated October 30, 2018).

²⁷ GE 3, *supra* note 2, at 21.

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

²⁹ AE AD (Statement, dated October 16, 2018).

³⁰ Tr. at 60-61.

³¹ AE T (VA Letter, dated September 25, 2018).

³² AE AJ (Personal Financial Statement, dated October 30, 2018).

quickly assess a situation, determine a viable solution and decisively act to remedy any and all issues.³³

The east region manager has known Applicant since 2008, but became Applicant's supervisor in 2013. Applicant's character is that of superior qualities and disposition. He is trustworthy, loyal, honest, and possesses integrity. He develops good working relationships with his staff, employees, and customers. He possesses the mental dexterity and competence needed in his role and consistently ranks as a top manager and at the forefront of his peer group. He has an exemplary ability to get things done while meeting unusual and taxing situations without becoming rattled. Applicant has mastered the aspect of his job and maintains unusually high standard of personal performance and intense dedication to the task at hand and overall management oversight. He is a true team player, versatile and accomplished.³⁴

The senior pastor of the church Applicant has attended since 2000 described Applicant's involvement in church ministry, including leading small groups, coaching soccer teams, doing community outreach, being a youth leader, and as the church administrator and youth pastor for certain worship ministries. With the many tragedies and unexpected issues that occurred in his life in a very short span, Applicant maintained a level of integrity, confidence, and maturity to push through those setbacks in his life.³⁵

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."³⁶ 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."³⁷

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

³³ AE C (Character Reference, undated).

³⁴ AE E (Character Reference, undated); AE A (Overall Assessment, dated March 31, 2018).

³⁵ AE G (Character Reference, dated September 18, 2018). See also AE V (Youth Soccer Materials, various dates).

³⁶ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

³⁷ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

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

In the decision-making process, facts must be established by "substantial evidence."³⁸ 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.³⁹

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."⁴⁰

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."⁴¹ 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

³⁸ "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).

³⁹ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

⁴⁰ *Egan*, 484 U.S. at 531.

⁴¹ See Exec. Or. 10865 § 7.

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.

Upon consideration of all the facts in evidence, including Applicant's testimony, as well as an assessment of Applicant's demeanor and credibility, and after application of all appropriate legal precepts and factors, I conclude the following with respect to the allegations set forth in the SOR:

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 nine delinquent accounts that had been placed for collection, three state tax liens filed against him, and one foreclosed mortgage. Not including the foreclosure, his debts totaled approximately \$7,719. In an effort to save his residence, Applicant filed for bankruptcy three times under Chapter 13 of the U.S. Bankruptcy Code. Each of those petitions were dismissed. There is no evidence that he was unwilling to satisfy his debts or that he had the ability to do so, and there is no evidence of frivolous or irresponsible spending, or consistent spending beyond his means. AG ¶¶ 19(a) and 19(c) have been established, and AG ¶ 19(e) has been partially established. AG ¶ 19(b) has not been established.

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

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;⁴²

(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;⁴³

⁴² 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)).

⁴³ The Appeal Board has previously explained what constitutes a good-faith effort to repay overdue creditors or otherwise resolve debts:

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

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

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

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

I have concluded that ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(g) all partially or fully apply, and ¶ 20(e) does not apply. Applicant's financial difficulties initially arose because of the illnesses and eventual deaths of both of his parents, situations that caused him significant medical, or nursing home expenses; his wife's health issues that prevented her from working for a period of time; Applicant's relatively brief period of unemployment; his step-granddaughter's birth with dyslexia; Applicant's efforts to gain guardianship over his step-granddaughter; and the difficulties he encountered in dealing with his mortgage company – all factors that were largely beyond his control. Faced with increased expenses and decreased family income, and wishing to remain financially responsible in meeting his commitments, commencing in late 2014, Applicant sought professional guidance from three attorneys, as well as his VA loan officer. He received financial counseling on two separate occasions. In an effort to save his residence from foreclosure, Applicant tried modifications and payment plans, only to be misled by the mortgage lender. Although he had filed for bankruptcy under Chapter 13, since the foreclose took place, Applicant chose to address the remaining delinquent accounts on his own.

Applicant contacted his creditors and collection agents and either paid off certain accounts or set up payment plans with the creditors calling for preauthorization for recurring transfers from his account. Three of the nine accounts have already been resolved; four of the accounts are in the process of being resolved; there is no deficiency stemming from the foreclosure; and two of the tax liens cannot be found in the courthouse where they were supposedly filed. Applicant vowed to resolve them if the court clerk could produce them. There are no other delinquent accounts. Now that the unanticipated expenses associated with his parent's issues and his wife's illness and unemployment have disappeared, and he is receiving a monthly VA disability award of \$2,171.68, he has made significant progress in stabilizing his finances and avoiding other financial delinquencies. As of October 2018, Applicant has \$7,861 in combined family net income; \$5,759 in monthly expenses and debt payments; and a monthly remainder of \$2,102 that might be available for discretionary spending or savings. With Applicant's long-term efforts to restore fiscal responsibility, the soon-to-be-completed payments under the structured payment plans, and his increasing monthly remainder, Applicant's financial situation is now under control. Applicant's actions under the circumstances no longer cast doubt on his current reliability, trustworthiness, and good judgment.⁴⁴

⁴⁴ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

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.

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.⁴⁵

There is some evidence against mitigating Applicant's conduct. After his honorable discharge from active duty, he had subsequent military service the state ANG and the U.S. Air Force Reserve. He was discharged as a senior airman with a general discharge under honorable conditions for unsatisfactory participation. Applicant had nine delinquent accounts that had been placed for collection, three state tax liens filed against him, and one foreclosed mortgage. Not including the foreclosure, his debts totaled approximately \$7,719. Applicant filed for bankruptcy three times within one year under Chapter 13 of the U.S. Bankruptcy Code. Each of those petitions were dismissed.

The mitigating evidence under the whole-person concept is more substantial. Applicant is a 44-year-old employee of a defense contractor. He has been serving as a project manager with his employer since August 2008. He completed several years of military

⁴⁵ 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).

service in the U.S. Air Force, from which he was honorably discharged. He was granted a secret clearance in 1997 and again in 2007. Applicant's supervisors describe him in extremely positive terms such as dedication and professionalism, combined with limitless enthusiasm and initiative. Technical acumen, natural leadership skills and sound decision making abilities are unmatched. He is trustworthy, loyal, honest, and possesses integrity.

Faced with increased expenses and decreased family income because of factors that were largely beyond his control, and wishing to remain financially responsible in meeting his commitments, Applicant sought professional guidance. In an effort to save his residence from foreclosure, he tried modifications and payment plans, only to be misled by the mortgage lender. Although he had filed for bankruptcy under Chapter 13, since the foreclose tool place, Applicant chose to address the remaining delinquent accounts on his own.

Rather than avoiding his financial problems, he chose to confront them. Applicant contacted his creditors and collection agents and either paid off certain accounts or set up payment plans with the creditors calling for preauthorization for recurring transfers from his account. There are no other delinquent accounts. As of October 2018, Applicant has a monthly remainder of \$2,102 that might be available for discretionary spending or savings. With Applicant's long-term efforts to restore fiscal responsibility, the soon-to-be-completed payments under the structured payment plans, and his increasing monthly remainder, Applicant's financial situation is now under control.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:⁴⁶

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.

⁴⁶ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

Applicant has demonstrated a belated but good track record of debt reduction and elimination efforts, already resolving some of his debts, and in the process of resolving the remaining debts. 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

Subparagraphs 1.a. through 1.m.: 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.

ROBERT ROBINSON GALES
Administrative Judge