



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



In the matter of:)
)
-----) ISCR Case No. 07-06689
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Kathryn D. MacKinnon, Esquire, Department Counsel
For Applicant: *Pro Se*

April 30, 2009

Decision

HARVEY, Mark W., Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns. His statement of reasons (SOR) listed 25 delinquent debts totaling about \$155,000. He paid five SOR debts totaling about \$3,300. He disputed two debts totaling about \$5,500. He has a payment plan on his Internal Revenue Service (IRS) debt and state tax debt, totaling about \$60,000. He has not made sufficient progress resolving about \$80,000 of remaining delinquent debt. Clearance is denied.

Statement of the Case

On August 10, 2006, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) or security clearance application (SF 86), (Government Exhibit (GE) 1). On September 22, 2008, the Defense Office of Hearings and Appeals (DOHA) issued an SOR detailing the basis for its preliminary decision to deny Applicant eligibility for access to classified information, citing security concerns under Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program*, dated

January 1987, as amended (Regulation), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On January 12, 2009, Applicant responded to the SOR and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on March 12, 2009. The case was assigned to me on March 16, 2009. On March 18, 2009, DOHA issued a hearing notice. The hearing was held on April 7, 2009. At the hearing, Department Counsel offered six exhibits (GEs 1-6) (Transcript (Tr.) 16-17), and Applicant offered 13 exhibits (AE A-M; Tr. 18-21). There were no objections, and I admitted GEs 1-6 and AE A-M (Tr. 17, 21, 98-99). Additionally, I admitted the SOR, response to the SOR and the hearing notice (GEs 7-9). I received the transcript on April 14, 2009. The record was held open until April 28, 2009, to permit Applicant to submit additional evidence (Tr. 82, 97, 99). On April 28, 2009, I received three telefaxes from Applicant AE N (14 pages), AE O (four pages) and AE P (8 pages).

Findings of Fact¹

In his SOR response, Applicant admitted his responsibility for 21 of the 25 debts listed in the SOR. He said he paid three of the remaining 21 delinquent debts, and one debt was in a payment plan. He did not address resolution of the 17 remaining debts totaling about \$87,000 with specificity about when payments were made or in what amounts. His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is 38 years old (Tr. 6). He graduated from high school in 1989 (Tr. 6). His six children (including adopted children, step children and foster children) were born in 1987, 1988, 1990, 1992, 1996, and 1999 (Tr. 89; GE 1). He completed three years of college (Tr. 6). He has not served in the military (Tr. 6). In 2003, he received a score of 83 out of 100 points on a police department examination (AE E). He has previously held a public trust position for several years; however, he has not held a security clearance (Tr. 23). His spouse does not work outside their home (Tr. 89). Applicant's daughter was admitted to a hospital in 2006 and 2007 for her severe asthma (Tr. 34). Insurance companies paid her medical expenses, which amounted to about a million dollars (Tr. 35). In December 2006, Applicant discovered that his spouse was having an affair (Tr. 35). Applicant received counseling to assist him with the stress from his daughter's illness and his spouse's infidelity (Tr. 35).

Applicant has an impressive professional career spanning 16 years of information technology experience, supporting the federal government. He is now a

¹Some details have not been included in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

senior software engineer and architect (AE F at 5). He is a Microsoft Certified Professional and Application Developer (AE J). He has trained, led and instructed others on software development and information technology utilization (AE F at 5). He provided an extremely detailed resume, which lists his training, work assignments, and accomplishments from 1992 to the present (AE G at 1-21). His current essential duties and responsibilities, including designing and completion of complex projects, show an impressive ability to document and organize complex endeavors (AE H at 1-11). His Project Completion Forms document Applicant's extraordinary ability to plan, lead teams, and accomplish highly complex goals (AE I at 1-42). He has established that he is dedicated, intelligent, hard working, and goal oriented with superb attention to detail (AE F-I). He has impressed his supervisors and customers with his duty performance, initiative and professionalism (AE K). He made substantial contributions to mission accomplishment (AE K, L, M). He volunteers as a health care worker (AE F at 1). He also volunteered his assistance at the 2009 Presidential Inauguration (AE F at 3-4).

Applicant's security clearance application indicates he has never been arrested or charged with any crime (GE 1). In the last seven years, he has not used any illegal drugs (GE 1). In the last seven years, he has not received treatment or counseling for alcohol or drug abuse (GE 1). He candidly disclosed a variety of financial problems on his 2006 security clearance application (GE 1).

Financial considerations

Applicant conceded he had ten years of bad credit, but believed he has acted responsibly to remedy his credit during the last two years (Tr. 96). In the late 1990s, Applicant began to fall behind on his debts (Tr. 45). Other debts became delinquent in 2001 and 2002 (Tr. 45). Applicant's response to DOHA interrogatories on November 7, 2007, indicated the debts in SOR ¶¶ 1.b to 1.d were paid (GE 5 at 2), the debts in SOR ¶¶ 1.e and 1.n were not his debts (GE 5 at 3, 6), payment arrangements were made or being made on SOR ¶¶ 1.p, 1.q and 1.u (GE 5 at 3, 4, 10), and no action was taken on the remaining SOR debts (GE 5 at 4-13).

The debt in SOR ¶ 1.a (\$3,500) became delinquent in 2001 or 2002, when Applicant's vehicle was repossessed (Tr. 45). He provided a printout he made showing one payment on this debt made on March 6, 2009; however, he did not provide the amount of this payment (AE N at 8).

Applicant's apartment complex obtained four judgments against him: SOR ¶ 1.b (\$210); SOR ¶ 1.c (\$1,823); SOR ¶ 1.d (\$132), and a non-SOR² judgment for \$2,385 (which appears on his February 2009 credit report) (Tr. 50, 54-55; GE 4). Applicant contended the three SOR judgments were paid via a garnishment for \$1,817 and the credit report alleging these multiple debt was erroneous (Tr. 51, 53-55; AE A; AE C at 2). Applicant provided a garnishment writ for the SOR creditor in ¶¶ 1.b, 1.c and 1.d, showing a judgment for \$1,817 plus costs and fees for a total of \$1,871, dated June 12,

²The non-SOR debt is not alleged in the SOR. I decline to draw any adverse inference against Applicant because of lack of notice.

2007 (AE A at 2). He provided sufficient corroboration to establish that a garnishment of \$1,871 was paid (AE C at 2).

Applicant disputed the debts in SOR ¶ 1.e (\$2,204) and SOR ¶ 1.n (\$3,331); however, he did not provide a copy of the documentation concerning his disputes (Tr. 56, 63-65). He also disputed the rationale for the debt in SOR ¶ 1.v (\$400) being on his credit report because it was over 10 years old (Tr. 69). A February 2009 credit report noted the debt in SOR ¶ 1.e was disputed and the debt in SOR ¶ 1.n did not appear on this credit report (Tr. 57, 65; GE 4).

Applicant said he paid the college debt in SOR ¶ 1.h (\$321) (Tr. 58). Applicant was allowed to continue to attend college, manifesting that the college was satisfied the debt was paid or satisfied (Tr. 59). After his hearing, he provided proof of a payment made on March 20, 2009 (AE N at 9).

Applicant owes a relative \$16,800 for a judgment she obtained against him because of a dispute over residential rent he owed her (SOR ¶ 1.i; Tr. 71). Applicant withheld the rent because of lack of repairs (Tr. 71-72). His relative evicted him and obtained a judgment (Tr. 72). He asked his relative for a letter about the debt's status for his security clearance hearing, and the relative declined because she claimed he had not paid her enough to warrant a letter of support about resolving the debt (Tr. 72-76). He said he made some payments to the relative in cash and did not have proof of such payments (Tr. 75).

Applicant said he made random payments over the years on most of his undisputed SOR debts, but the payments were not substantial (Tr. 47). He did not have proof of the payments at his hearing (Tr. 47). He said he started to address the debts in 2006 and 2007 (Tr. 47, 57-58). He said if the creditor contacted him in the last two years, he has been making some payments to resolve the debt (Tr. 62, 65, 68, 70). On some accounts, such as the judgment in SOR ¶ 1.m (\$2,040), he did not take any action (Tr. 63).

Applicant's largest debt is to the IRS for approximately \$58,000 (SOR ¶ 1.q). IRS letters, dated March 23, 2009, show that he owes \$51,192: (1) \$13,544 for tax year 1997 (AE D at 1); (2) \$29,619 for tax year 1998 (AE D at 3); and (3) \$8,029 for tax year 2005 (AE D at 2). The tax lien and judgment resulted from his failure to pay sufficient taxes in 1995, 1997 and 2005 (Tr. 28-29; AE D). Applicant has been paying this IRS debt since January 2007 and he continues to pay \$500 a month towards this debt in response to an IRS levy (Tr. 32, 33, 37; AE B at 1, 2; AE N at 3-5, 10, 12, 13, 14). Last year, Applicant paid \$6,000 towards this IRS debt (Tr. 32; AE C at 1). Applicant's 2007 pay statement shows payment of \$3,271 for this IRS debt (Tr. 38; AE C at 2).

Applicant did not make payments on the debt in SOR ¶ 1.r (\$33,211) because it was more than seven years old (Tr. 67). He contended he was no longer responsible for this debt because it had "dropped off" of his credit report (Tr. 67).

Applicant provided a garnishment writ for a non-SOR creditor, showing a judgment for \$853 plus costs and fees for a total of \$1,021, dated June 5, 2007 (AE A at 1). He provided a notice of satisfaction of this lien, dated September 18, 2007 (AE A at 4). SOR creditor in ¶ 1.x lists a debt for \$851. I assume these are the same debt and that the debt in SOR ¶ 1.x was paid through garnishment.

In 2008, Applicant's gross income was \$103,019 (W2, AE C at 1). Applicant said that beginning in 2007, when he received a bill from a creditor, he would enter that debt into his electronic bill paying system (Tr. 27). Unfortunately, he did not bring the printout of his debts to his hearing (Tr. 27). He also sent each creditor a letter promising to make payments every month (Tr. 27). He promised to provide the printout later (Tr. 27-28). As indicated previously, Applicant said, every creditor who recently billed him receives an automatic check from Applicant, every pay period, anywhere between \$5 and \$20 (Tr. 48). After his hearing he provided a four-page printout showing payments made to various creditors from May 7, 2008, to March 20, 2009 (AE N at 6-9). Most of the payments on the printout were to a telecommunications company and for gas and electric utilities, water, student loan and education costs at a university. He also frequently made payments to a loan servicing center, a realty company and about five collection agencies received one or two payments, mostly in February and March 2009 (AE N at 8-9). Two SOR-listed creditors received one payment each (creditors in SOR ¶¶ 1.a and 1.h). Of course, an SOR-listed creditor may have transferred a debt to one of the creditors on the list that is receiving a payment. At the hearing, I specified that Applicant should annotate the printout showing the SOR paragraph of the pertinent creditor (Tr. 79-80). However, the printout was devoid of references to the SOR paragraphs.

In addition to his printout, Department counsel requested that Applicant provide monthly bank statements showing funds leaving his account and payments to particular SOR creditors (Tr. 80-81). Applicant responded that he could provide bank statements with annotations in the margins showing his payments to the various creditors listed in the SOR (Tr. 79-80, 88). However, Applicant did not provide any bank account statements after his hearing.

Applicant said it was his impression that he was making monthly overpayments on his state tax debt of \$9,100 (SOR ¶ 1.p) (Tr. 39-41). He provided a printout he generated showing payments on his state tax debt on February 6 and 20, 2009 and March 6 and 20, 2009 (Tr. 39-41; AE N at 7-9). The printout he generated apparently showed some transaction fees or minimal payments on these four dates, but it was unclear how much was paid on his state tax debt (AE N at 7-9).

Applicant's current gross income is \$120,000 (Tr. 89). His monthly rent is \$2,500 (Tr. 89). I emphasized to Applicant the importance of providing proof that he was making payments to the SOR creditors prior to close of the record on April 21, 2009, and Applicant indicated he understood this requirement (Tr. 97-98).

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant an Applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon the Applicant meeting the criteria contained in the revised adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s over-arching adjudicative goal is a fair, impartial and common sense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or 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. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the [A]pplicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. 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 not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the Applicant that may disqualify the Applicant from being eligible for access to classified information. The government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an Applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the Applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An Applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the relevant security concern is under Guideline F (Financial Considerations). AG ¶ 18 articulates the security concern relating to financial problems:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 provides two Financial Considerations Disqualifying Conditions that could raise a security concern and may be disqualifying in this case, “(a) inability or unwillingness to satisfy debts,” and “(c) a history of not meeting financial obligations.” Applicant’s history of delinquent debt is documented in his credit reports, in his SOR response and at his hearing. Applicant failed to mitigate the financial considerations security concerns. His SOR listed 25 delinquent debts totaling about \$155,000. He paid five SOR debts totaling about \$3,300 (SOR ¶¶ 1.b-1.d, 1.h, and 1.x). He disputed two debts totaling about \$5,500 (SOR ¶¶ 1.e and 1.n). He has a payment plan on his Internal Revenue Service (IRS) debt and state tax debt; however, about \$60,000 remains to be paid (SOR ¶¶ 1.p and 1.q). He has not made sufficient progress resolving about \$80,000 of remaining delinquent debt (SOR ¶¶ 1.a, 1.f, 1.g, 1.i to 1.m, 1.o, 1.r to 1.t, 1.v, 1.w, and 1.y) His financial difficulties began in the late 1990s and continue today. The government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c).

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a)-(e) are potentially applicable:

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

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

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

Applicant's conduct does not warrant full application of AG ¶¶ 20(a) or 20(e) because he did not act more aggressively and responsibly to resolve his delinquent debts. His delinquent debts are "a continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). Applicant receives partial credit under AG ¶ 20(a) because his financial problems "occurred under such circumstances that [they are] unlikely to recur;" however, there is some residual doubt about whether he is fully committed to resolving his delinquent SOR debts and is making adequate steps to do so. He realizes the importance of avoiding delinquent debt and promised to make a greater effort to keep his debts current.

AG ¶ 20(b) partially applies. Applicant's financial situation was damaged due in part to his marital problems and stress from his daughter's illness. He has six children, and lives in a high cost area. He lacked the income to pay some of his debts. He does not receive full credit because many of his debts arose years ago, and he made little progress on most of them until his pay was garnished, judgments, liens or levies were filed against him. He established that he acted responsibly under the circumstances with respect to the debts he actually paid, through compliance with the garnishment orders, or through reaching settlements with creditors, such as the IRS.³

AG ¶ 20(c) partially applies. Applicant is a very intelligent, well organized, goal oriented person. He does not really need financial counseling or advice to resolve his debts. He manages to make payments on most of his non-SOR debts. Applicant has

³Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he maintained contact with his creditors and attempted to negotiate partial payments to keep his debts current.

taken positive action to pay five SOR debts. He is making payments of \$500 monthly on his IRS debt. He is also making some payments on his state tax debt, and his \$460 debt (SOR ¶ 1.u). He did not prove he had agreements with most of his creditors to accept minimal payments to resolve the other SOR debts. There are some positive “indications that the problem is being resolved or is under control.” He understands the security implications of delinquent debt and there are positive signs that he will avoid future delinquent debt. He has also established some mitigation under AG ¶ 20(d) because Applicant showed some good faith⁴ in the resolution of his SOR debts.

AG ¶ 20(e) applies because Applicant disputed the debts in SOR ¶ 1.e (\$2,204) and SOR ¶ 1.n (\$3,331). Although he did not provide a copy of the documentation concerning these two disputes, his February 2009 credit report noted the debt in SOR ¶ 1.e was disputed and the debt in SOR ¶ 1.n did not appear on this credit report. He also disputed the rationale for the debt in SOR ¶ 1.v (\$400) being on his credit report because it was over 10 years old. However, the age of the debt and whether or not it is on a credit report, without more, is not a valid basis for asserting mitigation under AG ¶ 20(e) for the debt in SOR ¶ 1.v.

In sum, Applicant should have been more diligent and made greater efforts sooner to resolve his delinquent debts. His payment of five SOR debts, his payment plans to resolve three debts, and his dispute of two debts, are simply inadequate to fully mitigate financial considerations security concerns. Applicant has not adequately addressed about 15 delinquent SOR debts, totaling about \$80,000.

Whole Person Concept

Under the whole person concept, the administrative judge must evaluate an Applicant’s eligibility for a security clearance by considering the totality of the Applicant’s conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable

⁴The 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)).

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.

The ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept. AG ¶ 2(c). I have incorporated my comments under Guideline F in my whole person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Although the rationale for reinstating Applicant's clearance is insufficient to support a security clearance at this time, there are several factors tending to support approval of his clearance. Applicant deserves substantial credit for his support to his country and his family. There is every indication that he is loyal to the United States, the Department of Defense, his employer and that he is an honorable person. There were no allegations of security violations. He does not have any arrests or convictions. Applicant is a high school graduate, and has three years of college. He was not sophisticated in the area of finance, and made mistakes years ago, and his debts became delinquent. Stress from marital problems, support of his six children, and his daughter's medical problems contributed to his financial woes. He understands how to avoid future delinquent debts. He paid several non-SOR debts and is current on many of his financial responsibilities. He paid five SOR debts, \$10,000 towards his IRS debt in the last two years, and is making payments on his state tax debt and one other SOR debt. He is making some progress on his way to establishing a meaningful track record of debt repayment. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). He is motivated to have a successful career as an employee of a Department of Defense contractor, to pay his delinquent debts and to have his security clearance approved. These factors show some responsibility, rehabilitation, and mitigation.

The whole person factors against reinstatement of Applicant's clearance are more substantial at this time. Failure to pay or resolve his just debts is not prudent or responsible. Applicant has a lengthy history of financial problems. He began to have financial difficulties in the late 1990s, when several debts became delinquent. On November 7, 2007, he received DOHA interrogatories and on January 12, 2009, he responded to the SOR. He had ample opportunity to contact more of his SOR creditors and to make greater progress in the resolution of his SOR debts. Of the 25 SOR debts, totaling about \$156,000, he provided documentary proof that he paid about \$10,000 to the IRS and about \$2,500 as required by two garnishments. He paid one non-garnishment, non-tax debt for \$321 (SOR ¶ 1.h). He is evidently making payments on his state tax debt, and another state-related debt (SOR ¶ 1.u, \$460). Applicant's current gross income is \$120,000, and was over \$100,000 the previous year. He made insufficient progress over the last 18 months to resolve his delinquent debts, even though he had steady employment and ample opportunity to contact his creditors and provide documentation. He provided voluminous documentation showing his superb

background in information technology and software development. He knows how to generate a comprehensive, thorough report showing his financial situation and to document progress in the resolution of his delinquent SOR debts. He was on clear notice from his receipt of DOHA interrogatories and even more so after he received the SOR that he needed to show substantial progress in the resolution of his delinquent debts; however, he made insufficient effort to accomplish this security responsibility.

After Applicant's delinquent SOR debts are paid, resolved or otherwise satisfied, and after a reasonable period of time without additional delinquent debts, (assuming no other disqualifying conditions surface), Applicant's access to classified information should be approved. He needs to provide documentary evidence, such as bank statements, or other receipts, to corroborate resolution of his debts. He needs some time after his SOR debts are paid to reestablish a track record of financial responsibility.

After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude he has not mitigated the financial considerations security concerns. I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole person factors and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has failed to mitigate or overcome the government's case. For the reasons stated, I conclude he is not eligible for access to classified information at this time.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b to 1.e:	For Applicant
Subparagraphs 1.f and 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i to 1.m:	Against Applicant
Subparagraph 1.n:	For Applicant
Subparagraph 1.o:	Against Applicant
Subparagraphs 1.p and 1.q:	For Applicant
Subparagraphs 1.r to 1.t:	Against Applicant
Subparagraph 1.u:	For Applicant
Subparagraphs 1.v and 1.w:	Against Applicant
Subparagraph 1.x:	For Applicant
Subparagraph 1.y:	Against Applicant

Conclusion

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

MARK W. HARVEY
Administrative Judge