



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-05118

Appearances

For Government: Richard A. Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

08/05/2015

Decision

GALES, Robert Robinson, Administrative Judge:

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

Statement of the Case

On March 12, 2013, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application.¹ On December 2, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 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 the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (effective within the DOD on September

¹ GE 1 (e-QIP, dated March 12, 2013).

1, 2006) (AG) for all adjudications and other determinations made under the Directive. The SOR alleged security concerns under Guideline F (Financial Considerations) and detailed reasons why the DOD adjudicators could not make an affirmative finding under the Directive 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 December 17, 2014. In a sworn statement, dated January 5, 2015, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. On June 2, 2015, Department Counsel indicated the Government was prepared to proceed. The case was assigned to me on June 5, 2015. A Notice of Hearing was issued on June 8, 2015. I convened the hearing, as scheduled, on June 25, 2015.

During the hearing, four Government exhibits (GE 1 through GE 4) and seven Applicant exhibits (AE A through AE G) were admitted into evidence without objection. Applicant and one witness testified. The transcript of the hearing (Tr.) was received on July 6, 2015. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity. He submitted additional documents that were marked as AE H through AE J and admitted into evidence without objection. The record closed on July 15, 2015.

Findings of Fact

In his Answer to the SOR, Applicant admitted four of the factual allegations in the SOR under financial considerations (§§ 1.b., and 1.e. through 1.g.). Department Counsel subsequently moved to amend the SOR by withdrawing SOR §§ 1.a. and 1.d. Applicant did not object to the motion, and the motion was granted.² Applicant's admissions 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 51-year-old employee of a defense contractor. He has been serving as a principal engineer since April 2007.³ He was previously employed by another defense contractor as an operational architect.⁴ A June 1982 high school graduate,⁵ Applicant earned two bachelor's degrees and a master's degree.⁶ He was initially granted a security clearance, the level of which was not revealed, in 1985,⁷ and

² Tr. at 47-48.

³ GE 1, *supra* note 1, at 9-10.

⁴ GE 1, *supra* note 1, at 10-11.

⁵ Tr. at 85.

⁶ Tr. at 27.

⁷ GE 2 (Personal Subject Interview, dated April 25, 2013), at 4.

a top secret security clearance in 2004.⁸ Applicant served in an enlisted capacity with the U.S. Army from January 1985 until September 2005, and he retired as a sergeant first class (E7) with an honorable discharge.⁹ Applicant was married in 1983.¹⁰ He has three children: a daughter born in 1981, and two sons born in 1987 and 2001, respectively.¹¹

Military Service

During his period of military service, Applicant was awarded the Meritorious Service Medal, the Army Commendation Medal (five awards), the Army Achievement Medal (five awards), the Meritorious Unit Commendation, the Army Good Conduct Medal (six awards), the National Defense Service Medal (two awards), the Kosovo Campaign Medal, the Global War on Terrorism Service Medal, the Southwest Asia Service Medal (three awards), the Non-Commissioned Officer's Professional Development Ribbon (three awards), the Army Service Ribbon, the Overseas Service Ribbon (three awards), the Kuwait Liberation Medal (Saudi Arabia), the Kuwait Liberation Medal (Kuwait), the Silver German Army Marksmanship Badge, and the North Atlantic Treaty Organization Medal.¹² Applicant was deployed to Saudi Arabia in support of Operation Desert Storm from August 1990 until July 1991; to Iraq in support of Operation Provide Comfort from April 1992 until October 1992; and to Macedonia in support of the Bosnian Relief Mission from November 1999 until April 2000.¹³

Financial Considerations

From 2004 until August 2007, Applicant conducted a part-time business (on weekends) selling brand-name shoes, jerseys, and other apparel in two adjacent stalls at a flea market. He made an estimated \$15,000 per year at the flea market. At some point in early to mid-2007, there was a burglary at the flea market and merchandise worth a substantial amount was stolen from him. Applicant's request that the flea market owner file an insurance claim was rejected. Thereafter, Applicant was of the opinion that the flea market owner considered Applicant to be a nuisance. In August 2007, Applicant was arrested by the sheriff and charged with felony violation of intellectual property, otherwise known as selling counterfeit goods. His merchandise, with an estimated retail value of \$60,000, was confiscated. When Applicant's attorney presented documentation that the merchandise was legitimate, and not counterfeit, the charges were dismissed. Nevertheless, his confiscated merchandise was never returned.¹⁴ Because the

⁸ GE 1, *supra* note 1, at 33-34.

⁹ AE I (Certificate of Release or Discharge from Active Duty, dated September 30, 2005).

¹⁰ GE 1, *supra* note 1, at 16.

¹¹ GE 1, *supra* note 1, at 19-21.

¹² AE I, *supra* note 9.

¹³ AE I, *supra* note 9; Tr. at 32-33.

¹⁴ GE 2, *supra* note 7, at 1-5; Tr. at 49-51.

merchandise had been confiscated, and Applicant was unable to sell it, he could not pay for the merchandise that he had already charged to his credit card.

From late 2006 until March 2008, Applicant also conducted a business operating an automobile repair shop with the assistance of one full-time employee. He had hoped the business would become a profitable endeavor, but with the deteriorating economy, it did not. Instead, Applicant considered it to be a “money pit” and he shut it down.¹⁵

Applicant started experiencing financial difficulties in 2007 with the loss of his flea market business and inventory, the lack of success and eventual closure of his auto repair shop business, and the deteriorating economy.¹⁶ He prioritized his bills, addressing his personal bills, then his business bills with his regular wages, and paid his employee’s salary from his savings. That process continued until he had no money left.¹⁷ As a result, while his personal accounts remained current, his business accounts became delinquent. Applicant contacted his creditors in an effort to resolve the debts and establish repayment arrangements. Some of his creditors or collection agents initially agreed to work with him, but they purportedly ultimately demanded an initial large lump payment or the entire balance immediately rather than agreeing to repayment plans.¹⁸ Applicant simply did not have the capital to comply with his creditors’ demands.¹⁹

The SOR initially identified eight purportedly continuing delinquencies as reflected by credit reports from March 2013²⁰ and July 2014,²¹ totaling approximately \$130,812. With the withdrawal of SOR ¶¶ 1.a. and 1.d., the remaining six accounts total approximately \$82,756. Those remaining debts listed in the SOR and their respective current status, according to the credit reports, other evidence in the case file, and Applicant’s admissions regarding the same, are described below.

(SOR ¶ 1.b.): There is a personal credit card used for Applicant’s flea market business with a credit limit of \$13,000 and a past-due balance (including penalties and interest) of \$16,417 that was charged off.²² Applicant purportedly approached the creditor in an attempt to set up a repayment plan, but the creditor would only agree to do so if Applicant first made a lump-sum payment of one-half of the remaining balance.

¹⁵ GE 2, *supra* note 7, at 2.

¹⁶ Tr. at 74-75.

¹⁷ Tr. at 75.

¹⁸ Tr. at 77.

¹⁹ Tr. at 77.

²⁰ GE 3 (Combined Experian, TransUnion, and Equifax Credit Report, dated March 19, 2013).

²¹ GE 4 (Equifax Credit Report, dated July 15, 2014).

²² GE 3, *supra* note 20, at 5; GE 4, *supra* note 21, at 2; Tr. at 22-24.

The creditor attempted to obtain a judgment against Applicant, but the matter was dismissed. Applicant or his attorney continued to make various repayment offers, but each such offer was rejected without an initial lump-sum payment.²³ Eventually, the creditor stopped pursuing the issue. Applicant disputed the account, and while it was on his July 2014 credit report,²⁴ it has been removed from three more recent December 2014 credit reports.²⁵

(SOR ¶ 1.c.): There is a telephone account with an unpaid balance of approximately \$726 that was placed for collection and transferred or sold to a debt purchasing company.²⁶ Applicant explained that he had been a customer of the company since 2001. Over the years, the company had made a number of unauthorized changes to his account. In 2009, in acknowledgement of those unauthorized changes, the company retention control department granted Applicant a 23 percent discount to remain in effect so long as Applicant remained a customer. One day in 2013, while he was on the road, Applicant's telephone died, and he had to purchase a new one. He agreed to add a two-year plan for the new telephone to his existing account without any other changes. However, upon receiving his first bill the following month, he noted that the discount had been removed. Applicant disputed the action with several representatives at different levels of authority at the company, but they refused to restore the discount. Applicant informed the last representative that he considered the action removing the discount to be a voiding of the contract. He returned the telephone to the company and cancelled his service with them. He received a refund of \$99 for the telephone. The final bill was for cancellation fees associated with the telephone. Applicant disputed the account with the credit reporting agencies.²⁷ While the account was on his July 2014 credit report,²⁸ and it remains on his December 2014 credit report from the same credit reporting agency,²⁹ it has been removed from two other December 2014 credit reports.³⁰

(SOR ¶ 1.e.): There was a business loan from an investment group for his automobile repair shop in the disputed amount of \$19,000 or \$24,000 for which Applicant made monthly payments of \$902 for nine months before being unable to

²³ Tr. at 52-53; GE 2, *supra* note 7, at 5.

²⁴ GE 4, *supra* note 21, at 2.

²⁵ AE C (Experian Credit Report, dated December 22, 2014); AE A (TransUnion Credit Report, dated December 22, 2014); AE B (Equifax Credit Report, dated December 22, 2014).

²⁶ GE 4, *supra* note 21, at 2; AE B, *supra* note 25, at 19.

²⁷ Applicant's Answer to the SOR, dated January 5, 2015, at 1; Tr. at 54-57.

²⁸ GE 4, *supra* note 21, at 2.

²⁹ AE B, *supra* note 25, at 19.

³⁰ AE C, *supra* note 25; AE A, *supra* note 25.

continue doing so in mid-2008.³¹ Applicant purportedly contacted the lender repeatedly, most recently in May 2014, in an effort to restructure the loan, but his efforts were rejected. It would not accept any amount less than the expected monthly payment.³² The account was placed for collection and charged off.³³ Somehow the past-due balance increased to \$42,139 by March 2013.³⁴ It increased to \$50,909 by November 2014.³⁵ The account was scheduled to be removed from Applicant's credit report in March 2015.³⁶ The account does not appear in two of his December 2014 credit reports.³⁷

(SOR ¶ 1.f.): There is a personal credit card account used for both personal charges and for the automobile repair shop with a past-due balance of \$17,229 that was placed for collection and charged off in January 2007.³⁸ Applicant contends he made several efforts to lower his monthly payments, but those efforts were rejected.³⁹ The account does not appear in his July 2014 credit report⁴⁰ or in any of his December 2014 credit reports.⁴¹

(SOR ¶ 1.g.): There is another credit card account from the same credit card company used for both personal charges and for the automobile repair shop with a past-due balance of \$6,096 that was placed for collection and charged off in March 2008.⁴² Applicant contends he made several efforts to lower his monthly payments, but those efforts were rejected.⁴³ The account does not appear in his July 2014 credit report⁴⁴ or in any of his December 2014 credit reports.⁴⁵

³¹ Applicant has steadfastly stated that the loan was for approximately \$19,000, but his March 2013 credit report indicates the high credit was \$24,000. See GE 3, *supra* note 20, at 5; Applicant's Answer to the SOR, *supra* note 27, at 2; Tr. at 57-58.

³² Applicant's Answer to the SOR, *supra* note 27, at 2; Tr. at 57-60.

³³ AE A, *supra* note 25, at 2.

³⁴ GE 3, *supra* note 20, at 5.

³⁵ AE A, *supra* note 25, at 1.

³⁶ AE A, *supra* note 25, at 2.

³⁷ AE B, *supra* note 25; AE C, *supra* note 25.

³⁸ GE 3, *supra* note 20, at 5; GE 2, *supra* note 7, at 4-5.

³⁹ Applicant's Answer to the SOR, *supra* note 27, at 2; Tr. at 63-64.

⁴⁰ See GE 4, *supra* note 21.

⁴¹ See AE A, *supra* note 25; AE B, *supra* note 25; AE C, *supra* note 25.

⁴² GE 3, *supra* note 20, at 6; GE 2, *supra* note 7, at 4-5.

⁴³ Applicant's Answer to the SOR, *supra* note 27, at 2; Tr. at 63-64.

⁴⁴ See GE 4, *supra* note 21.

⁴⁵ See AE A, *supra* note 25; AE B, *supra* note 25; AE C, *supra* note 25.

(SOR ¶ 1.h.): There is an unspecified account with an account processing company with an unpaid balance of \$187 that was placed for collection in March 2009.⁴⁶ During his April 2013 interview with an investigator from the U.S. Office of Personnel Management (OPM), Applicant claimed to have no knowledge of the account, but indicated he would contact the creditor immediately to determine what the account was about and satisfy it.⁴⁷ He subsequently disputed the account.⁴⁸ The account does not appear in his July 2014 credit report⁴⁹ or in any of his December 2014 credit reports.⁵⁰

On July 10, 2015, Applicant submitted a Personal Financial Statement (PFS) that reflected a net monthly income of \$6,516 and total monthly expenses of \$5,382.95. That left him with an estimated monthly surplus of \$1,133.05 available for discretionary savings or spending.⁵¹ However, as he pointed out, he chose not to include his wife's monthly net income in his PFS as she handles her own "set of bills" including family groceries.⁵² Applicant's wife's approximate gross annual salary is \$33,000.⁵³ Applicant's PFS also indicated that he has \$3,500 in savings, and \$65,000 in a 401(k).⁵⁴

Applicant has repeatedly professed to the OPM investigator in April 2013, in his Answer to the SOR in January 2015, and during the hearing in June 2015, that he was willing to settle his accounts no matter how long it takes. Yet, despite a substantial monthly remainder available for discretionary spending, since about 2008, he has essentially made no payments on his SOR-related delinquent "business" accounts. He repeatedly referred to his intentions and purported actual efforts to resolve his delinquent accounts and creditor demands for large payments, but he failed to submit any documentation either from himself or from creditors or collection agents to support his contentions. He admitted that no such efforts took place following his OPM interview.⁵⁵ During the hearing, Applicant stated he is still willing to pay his debts off because he has a moral responsibility to do so.⁵⁶

In 1997 or 1998, Applicant engaged the professional services of a financial counseling service to assist him in consolidating his bills to lower his monthly

⁴⁶ GE 3, *supra* note 20, at 11.

⁴⁷ GE 2, *supra* note 7, at 6.

⁴⁸ Applicant's Answer to the SOR, *supra* note 27, at 2.

⁴⁹ See GE 4, *supra* note 21.

⁵⁰ See AE A, *supra* note 25; AE B, *supra* note 25; AE C, *supra* note 25.

⁵¹ AE J (Personal Financial Statement, dated July 10, 2015).

⁵² AE H (e-mail, dated July 10, 2015).

⁵³ Tr. at 37.

⁵⁴ AE J, *supra* note 51.

⁵⁵ Tr. at 67-68.

⁵⁶ Tr. at 81-82.

payments.⁵⁷ There was no indication that any accounts were delinquent at that time. Other than consolidation guidance, there is no evidence of financial counseling related to the handling of delinquent accounts, debt resolution, budgeting, etc.

Character References

A retired director of the company for which Applicant works hired Applicant. He claimed he worked Applicant and his other subordinates hard for the benefit of the company, leaving them little time for their spiritual, financial, or personal needs. Applicant's technical expertise was extraordinary and matched by only one other individual in the Army. He characterized Applicant in highly favorable terms: very trustworthy, and super honest.⁵⁸ The director of the military network (and an Army Colonel who has known Applicant for over 12 years) for which Applicant works, noted that Applicant is a highly qualified, well-suited, self-starter, who is highly deserving of the continued opportunity to be a tremendous asset.⁵⁹ The chief technology officer in an office of an assistant secretary of the Army has worked on several projects with Applicant, and he has characterized Applicant as loyal, responsible, trustworthy, and ethical. He noted that Applicant had explained to him "the actions [Applicant] has taken to remedy these credit issues." He urges that Applicant be "permitted to resolve his credit issues over time and that he retain his clearance."⁶⁰ Other coworkers and friends are equally supportive of Applicant's application, and they, too, have only sterling recommendations for him.⁶¹

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."⁶² 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."⁶³

⁵⁷ Tr. at 73-74.

⁵⁸ Tr. at 88-97.

⁵⁹ AE D (Character Reference, dated June 23, 2015).

⁶⁰ AE E (Character Reference, dated June 22, 2015).

⁶¹ AE F (Character Reference, dated June 24, 2015); AE G (Character Reference, dated June 10, 2015).

⁶² *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁶³ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG 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, 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."⁶⁴ 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.⁶⁵

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."⁶⁶

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."⁶⁷ Thus, nothing

⁶⁴ "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).

⁶⁵ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

⁶⁶ *Egan*, 484 U.S. at 531.

⁶⁷ See Exec. Or. 10865 § 7.

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.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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. . . .

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly, under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. Commencing in 2007, various accounts were placed for collection or charged off, and today – eight years later – they remain unpaid. AG ¶¶ 19(a) and 19(c) apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where "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." Also, under AG ¶ 20(b), financial security concerns may be mitigated where "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." Evidence that "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" is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."⁶⁸ In addition, AG ¶ 20(e) may apply if "the individual has a reasonable

⁶⁸ The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

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.”

AG ¶ 20(b) partially applies. AG ¶ 20(d) minimally applies. AG ¶¶ 20(a), 20(c), and 20(e) do not apply. Applicant’s financial problems started in 2007 when his flea market merchandise was initially stolen in mid-2007, and again in August 2007, when an estimated \$60,000 worth of merchandise was confiscated, but never returned. Things got worse when he was forced to close his automobile repair shop in 2008. Applicant made a strategic decision regarding his accounts: he prioritized his bills, addressing his personal bills, then his business bills with his regular wages, and paid an employee’s salary from his savings. That process continued until he had no money left. As a result, while his personal accounts remained current, his business accounts became delinquent. Applicant contended that he contacted his creditors in an effort to resolve the debts and establish repayment arrangements. Some of his creditors or collection agents purportedly demanded an initial large lump-sum payment or the entire balance immediately rather than agreeing to repayment plans. Applicant simply did not have the capital to comply with his creditors’ demands. As noted above, Applicant failed to submit any documentation to support either his efforts or his creditors’ demands.

Applicant acknowledged that he made no efforts to resolve his delinquent “business” accounts after his OPM interview in 2013. Instead, Applicant disputed the accounts with the credit reporting agencies. Applicant’s relatively successful efforts in disputing the delinquent accounts do not support his contentions that they were either not his accounts or that they were erroneous balances. Considering the age of the delinquent accounts, and the period of Applicant’s inaction or refusal to make any repayments since those accounts were generally charged off in 2007, 2008, or 2009, it appears that the accounts fell off Applicant’s credit reports because of the age of the debts, the statute of limitations had simply run out for most of them, or a combination of both. Delaying the resolution of delinquent debts and allowing them to become uncollectible under the state statute of limitations, does not reflect a good-faith resolution of those debts.

Applicant acknowledged that in 1997 or 1998 he had received some debt consolidation counseling to lower his monthly payments. There was no indication that any accounts were delinquent at that time. Other than that consolidation guidance, there is no evidence of financial counseling related to the handling of delinquent accounts,

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].

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

debt resolution, or budgeting. While all of Applicant's newer accounts appear to be current, he has done little if anything to resolve the "business" accounts alleged in the SOR. Applicant clearly has \$1,133 available each month, in addition to whatever his wife may have available, for discretionary savings or spending, in addition to some savings and 401(k) monies available. Yet, rather than addressing his delinquent debts in a responsible manner, over the years, he simply ignored them, and continues to do so, despite his repeated promises to take positive action.⁶⁹ Applicant's actions under the circumstances continue to cast substantial doubt on his current reliability, trustworthiness, and good judgment.⁷⁰

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 relevant 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 participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), 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.

There is some evidence in favor of mitigating Applicant's conduct. He apparently is a gifted, highly valued, hard worker. He is also a retired, decorated combat warrior with three deployments. His superiors and coworkers characterized him as loyal, responsible, trustworthy, and ethical. Despite some bad business experiences, Applicant managed to keep his personal accounts current. In the very beginning of his financial difficulties, Applicant addressed some of his business responsibilities by paying salaries out of his personal accounts.

⁶⁹ "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

⁷⁰ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

The disqualifying evidence under the whole-person concept is more substantial than the mitigating evidence. While, in the beginning of his financial problems, Applicant addressed some of his business responsibilities by paying salaries out of his personal accounts, at some point in 2008 he simply stopped doing so, claiming he ran out of funds to continue making any “business” payments. Whether they were personal accounts or business accounts in this instance is irrelevant for the accounts were personal accounts used for business purposes or they were mingled accounts used for both purposes. Applicant claimed he made repeated offers to resolve the delinquent accounts, but he failed to submit any documentation to support his contentions. He claimed he disputed the accounts with the credit reporting agencies and that the accounts were removed from his credit reports. Once again, he failed to submit any documentation to support his contentions as to why the accounts dropped off his credit reports.

One of Applicant’s character references noted that Applicant had explained to him the actions Applicant had taken to remedy his credit issues, and he urged that Applicant be permitted to resolve those issues over time. It is unclear what Applicant’s explanations to his colleague might have been. One thing is clear, however, and that is that Applicant has had approximately seven years to start resolving his delinquent “business” debts, and he has done essentially nothing to do so, even with one of those debts.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:⁷¹

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.

⁷¹ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

Applicant has demonstrated an essentially negative track record of voluntary debt reduction and elimination efforts, generally ignoring his delinquent debts until the statute of limitations lapsed on them. Overall, the record evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has failed to mitigate the security concerns arising from his financial considerations. See AG ¶ 2(a)(1) through AG ¶ 2(a)(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
Subparagraph 1.a:	Withdrawn
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Withdrawn
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant

Conclusion

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

ROBERT ROBINSON GALES
Administrative Judge