

**DEBT AND HOME FORECLOSURES:
THEIR EFFECT ON NATIONAL SECURITY CLEARANCES¹**

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INTRODUCTION AND SUMMARY

The Department of Defense, Office of Hearings and Appeals (DOHA) has now become the nation's bill-collector-in-chief. Since the collapse of the housing market in 2008, debt resulting from job losses and home foreclosures have had a devastating effect on people holding national security clearances. That, more than any other factor today, is causing the revocation or denial of security clearances, resulting in the loss of good paying jobs, and putting skilled workers further and further behind in their effort to dig out of debt.

In writing this article, all DOHA Appeal Board cases based primarily on Guideline F, "Financial Considerations" between 2006 and June 2010, were reviewed, as well as all Administrative Judge initial decisions dealing with foreclosures and "short sales" during the same period.³ A listing of these cases is found as Appendices A through D to this article. A few Appeal Board decisions which also considered Guideline E are included.⁴

From 2000 to 2002, there was one reported case at DOHA dealing with foreclosure. Between 2003 and 2006, there averaged three cases per year. In 2007 and 2008, the number of cases dealing with foreclosures jumped to nine each year. In 2009, there were twenty-four such cases, and in the first five months of 2010, which looks like a record year, there have been nine foreclosure cases thus far.⁵ While DOHA and the Department of Energy are the only adjudicative bodies for clearances that publish their decisions, there is no reason to believe that any of the other nine federal Adjudication Authorities come to different results.⁶

³ Guideline F is set out in full in footnote 8, below.

⁴ Guideline E, Personal Conduct.

⁵ Data comes from the DOHA website; www.dod.mil/dodgc/doha.

⁶ There are seven Central Adjudication Authorities in the Department of Defense including one for each of the Armed Services, the Office of the Joint Chief, the Defense Intelligence Agency, Washington Headquarters Services, and the National Security Agency. In addition, the Central Intelligence Agency, Federal Bureau of Investigation, Department of Energy and Department of Homeland Security make their own clearance or access determinations. Department of Energy decisions may be found at <http://www.oia.doe.gov/persec2.asp>.

In March, 2009 I wrote an article entitled, “The Department of Defense Says if You Lose Your Home, You will Lose your Clearance”.⁷ That article was prescient of the worst yet to come. Since then, the number of security clearance denials and revocations has kept pace with the number of foreclosures, defaults, and short sales in the country, and the trend continues.

Decisions of the DOHA Appeal Board were examined to determine what standards of review the Board applied to Guideline F cases, what was the likelihood of success at the Appeal Board, and how having counsel affected the outcome of a case. Decisions of the administrative judges were also reviewed to see whether there was a commonality of facts and circumstances leading to clearances being granted, or conversely, leading to clearances being denied. Administrative Judge decisions were also reviewed to see what factors caused Department Counsel to appeal, or not to appeal, an administrative judge’s decision granting a clearance.

Twenty-two administrative judge decisions dealing with foreclosures and short sales were reviewed, where clearances were *granted* and not appealed. These were examined to see what facts were sufficient to meet the initial challenge of convincing an Administrative Judge while at the same time were sufficient to satisfy Department Counsel not to appeal. The common thread in all of these cases is that: (1) applicants were victims of circumstances not of their own doing; (2) they had not been speculators in the housing market who were caught when the bubble burst; (3) they had not succumbed to fraudulent schemes “too good to be true” as a result of their own greed; and (4) they had made good faith efforts to meet their other debts after the loss of their homes by foreclosure or short sale.

Also reviewed were twenty Administrative Judge initial decisions concerning mortgage foreclosures and short sales in which a clearance was *denied* and not appealed by Department Counsel. These were examined to see what, if anything, distinguished them from the cases where clearances were granted by an Administrative Judge. In this latter group of cases, generally, the applicants had no plan to pay their remaining debts, their losses were the result of misguided greed, or they were real estate speculators who mistimed the market.

Finally, sixteen Administrative Judge initial decisions were reviewed where the applicant was granted a clearance, but where Department Counsel appealed to the Appeal Board. In this group, twelve of these favorable decisions were reversed and four were sustained. In only one case where an Administrative Judge *denied* a clearance did the Appeal Board reverse and remand for further review. In that case the judge, on remand, acquiesced to the Board’s view and granted the clearance.

In comparing the favorable decisions which the Appeal Board sustained to the favorable decisions it has reversed, one can only conclude that the odds of a reversal are unpredictable. The Board’s decisions are a reflection of what it thinks, in any given case, support a finding of good faith and moral behavior. On that slender thread hangs the government’s defense contractor workforce.

⁷ The article may be found at : www.sheldoncohen.com/publications/index.htm.

THE REGULATION INVOLVED

When a person has debt or other financial problems, security clearance determinations are adjudicated under Guideline F: Financial Considerations, which is a part of the *Uniform Guidelines for Determining Eligibility for Access to Classified Information*.⁸ This is the standard by which the

⁸ 32 CFR Part 154, Appendix H. Guideline F, Financial Considerations states:

“The concern. 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

“Conditions that could raise a security concern and may be disqualifying include:

- (a) Inability or unwillingness to satisfy debts;
- (b) Indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt.
- (c) A history of not meeting financial obligations;
- (d) Deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;
- (e) Consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis;
- (f) Financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern;
- (g) Failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same;
- (h) Unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that cannot be explained by subject's known legal sources of income;
- (i) Compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, “chasing losses” (i.e. increasing the bets or returning another day in an effort to get even), concealment of gambling losses, borrowing money to fund gambling or pay gambling debts, family conflict or other problems caused by gambling.

“Conditions that could mitigate security concerns include:

(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
(continued...)

Federal Government determines the security worthiness of a person having financial difficulties, or who does not meet their financial obligations.

STATISTICAL REVIEW OF APPEAL BOARD AND ADMINISTRATIVE JUDGE DECISIONS

In making this study, reviewed were DOHA Appeal Board cases from January 2006 to June, 2010 which considered (with a few exceptions) only Guideline F, “Financial Considerations”.⁹ This review showed some startling results. During that period, the Appeal Board reviewed seventy-one Financial Guideline cases. Of those, sixty-two were decided against the applicant, five for the applicant, and four were remanded.¹⁰ Of those decided against the applicant, forty-eight affirmed initial decisions denying a clearance, fourteen reversed initial decisions granting a clearance, and three remanded initial decisions granting a clearance for further consideration. Of the five Appeal Board decisions decided in favor of the applicant, four affirmed favorable initial decisions, and one reversed an initial decision denying a clearance. One adverse decision was remanded for further consideration.

One might argue that the reason so many denials were affirmed was that the Administrative Judges were correct in their initial decisions. However the number of favorable initial decisions reversed belies that. Only four favorable decisions were affirmed but fourteen favorable decisions were reversed. If the Appeal Board thought that the Administrative Judges were so wise when they

⁸(...continued)

(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;

(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;

(f) The affluence resulted from a legal source of income.”

⁹ Cases which were based on other Guidelines in addition to Guideline F, such as Guideline E, Personal Conduct, or Guideline J, Criminal Conduct, were not considered, because the decisions often were based on facts considered under the other Guidelines.

¹⁰ See, Tables at Appendices A and B.

denied clearances, how is it that they were not so wise when they granted clearances? One can only conclude that the Appeal Board will allow almost any denial, but will minutely scrutinize any grant of a clearance to see whether the case meets its own idea of what debt is excusable.

Of the sixteen favorable decisions reversed or remanded, Administrative Judge Mary E. Henry accounted for seven of them, being reversed five times and remanded twice. Of the remaining ten favorable decisions that were reversed, Judge Lokey-Anderson, was reversed twice. The remaining seven reversed decisions were attributable to one judge each. One can conclude, therefore, that an applicant's chance of winning on appeal, either by reversal of an unfavorable decision or the sustaining of a favorable decision, is poor. Further, the data shows that if a case is assigned to Judge Henry, the applicant will have a higher chance of winning at the initial stage, but also a higher chance that the government will appeal that decision and the decision will be reversed by the Appeal Board.

Also reviewed were the initial decisions of the Administrative Judges dealing with foreclosures and short sales from 2007 through June 2010 (with one 2006 decision).¹¹ Sixty-two initial decisions met that criteria. Of those, thirty-eight clearances were granted and twenty-four denied. Topping the list for granting favorable decisions was Administrative Judge Henry with six clearances granted (and one denied), followed by Judge Lokey-Anderson with four favorable decisions and no denials, and Judge Anthony with three favorable and one denial. The judges with the most denials were Judge Wesley who had five denials and two favorable decisions, and Judge Ricciardello with four denials and no favorable decisions. The other twenty-four Administrative Judges who ruled on Guideline F, short sale and foreclosure cases during that period issued one or two decisions each, split about evenly in the favorable and unfavorable categories.¹²

DECISIONS OF THE DOHA APPEAL BOARD

The DOHA Appeal Board claims not to be the nation's bill collector. It has stated:

A security clearance adjudication is not a proceeding aimed at collecting an applicant's debts. Rather it is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness. Accordingly, even if a delinquent debt is legally unenforceable, the federal government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy the debt in a timely manner.¹³

While the Board pays lip service to this position, its rulings are to the contrary.

¹¹ See, Tables at Appendices C and D.

¹² See the Tables at Appendices C and D.

¹³ ISCR Case No. 07-09966 at 3 (App. Bd., Jun. 25, 2008) (citing ISCR Case No. 01-09691 at 3 (App. Bd., Mar. 27, 2003). Accord, ISCR Case No. 07-08049 at 4 (App. Bd., Jul. 22, 2008)).

In my March, 2009 article, I wrote about a case where the applicant, a successful businessman running a small defense contracting company, bought a number of residential properties at the height of the real estate boom. He discovered, after going to closing, that the properties were not owned by the supposed seller who, along with the real estate agent, the property appraiser and the mortgage broker engaged in a massive fraud to overvalue the properties, provide false rental information, list phony tenants, and market overpriced loans. Immediately after the closing, the supposed seller filed for bankruptcy and the rest of the conspirators disappeared, skimming over a million dollars from the scheme.¹⁴ After unsuccessfully attempting to renegotiate the loans with the banks, the applicant defaulted on his loans and the banks foreclosed on the properties. As a result, the Department of Defense proposed to revoke the applicant's security clearance, citing his "excessive debt" on the foreclosed loans. Administrative Judge Henry who understood that under the Arizona anti-deficiency law the applicant was no longer indebted to any of the banks, ruled in the applicant's favor.¹⁵

Department Counsel appealed the decision, arguing to the DOHA Appeal Board that the applicant was still obligated on the debt regardless of Arizona's antideficiency statute. The Appeal Board accepted that argument and reversed the Administrative Judge, ruling that:

The Judge's favorable decision relied, to a large extent, on her findings that (1) the broker deceived Applicant into purchasing the houses and (2) the state's anti-deficiency laws prevent a lender from collecting from a homeowner the difference between the amount realized at a foreclosure sale and the remaining balance of the home loan. On the latter point, reliance on the non-collectability of a debt does not constitute a good faith effort to resolve that debt within the meaning of the [security] Directive.¹⁶

While in my earlier article I concluded that the import of that ruling was that a holder of a security clearance must repay, in full, bank loans made even under fraudulent circumstances, even when the debt is discharged under state law, that conclusion must be tempered somewhat by looking at what the DOHA Administrative Judges have ruled, and at what, in other more recent cases, the Department Counsel has appealed to the DOHA Appeal Board. In the case discussed above, the applicant was a speculator in real estate, and even though he was defrauded, he took advantage of the state anti-deficiency law to avoid payment of the mortgages. He was not a person who lost his home through circumstances beyond his control such as illness or loss of employment. The latter type of circumstances generally led to different results in other cases.

¹⁴ DOHA ISCR Case No. 07-16841 (AJ Decision, Sept. 12, 2008).

¹⁵ *Id* at 11.

¹⁶ ISCR Case No. 07-16841 at 5 (App. Bd., Dec. 19, 2008).

Factors Influencing the Appeal Board

Most of the cases decided by the Appeal Board have little in the way of analysis. The Appeal Board simply holds that:

A judge is presumed to have considered all of the evidence in the record. . . . After reviewing the record, we conclude that the judge examined the relevant data and articulated a satisfactory explanation for the decision, “including a rational connection between the facts found and the choice made”.¹⁷

In a number of its cases, the Appeal Board has offered often contradictory guidance. The Board will state a principle influencing its decision in one case, but will state that the principle need not necessarily apply in another.¹⁸ The Board’s view of financial problems seems to be like the Supreme Court’s view of pornography; it cannot define it but it knows when it sees it.

Bankruptcy

The Board’s ambiguity is particularly true when it comes to Bankruptcy. It has held that the government is not precluded from considering the negative security implications of an applicant’s overall history of financial difficulties merely because the applicant exercises the right to seek a discharge of debts and bankruptcy.¹⁹ It has also held that a discharge of bankruptcy does not preclude consideration of the underlying debts or constitute a good faith effort to resolve debts.²⁰ The Board has ruled an applicant must do more than show that he or she relied on a legally available option such as bankruptcy in order to claim the benefit of this mitigating condition.²¹

¹⁷ E.g., ISCR Case No. 08-09704 (App., Bd., Mar. 31, 2010).

¹⁸ See, ISCR Case No. 07-09304 (App., Bd. Oct. 6, 2008). (The Appeal Board reversed a favorable decision holding that the totality of the evidence in this case did not reasonably support the Judge’s whole person analysis.)

¹⁹ ISCR Case No. 08-00435 (App., Bd. Jan. 22, 2009) (citing ISCR Case No. 01-27082 at 3 (App. Bd., Aug. 5, 2003)).

²⁰ ISCR Case No. 07-09966 (App. Bd., Jun. 25, 2008) (citing ISCR Case No. 01-09691 at 3 (App. Bd., Mar. 27, 2003); ISCR Case No. 00-0345 at 3 (App. Bd., Dec. 12, 2001); ISCR Case No. 99-9020 at 5-6 (App. Bd., Jun. 4, 2001)).

²¹ *Id.* at f.n.6 (citing ISCR Case No. 03-20327 at 4-5 (App., Bd. Oct. 26, 2006)).

Nexus of Debt to Employment History

The Appeal Board has held that, for an applicant to show that her financial difficulties were beyond her control, she must show a direct connection between her employment history and her present financial situation. A connection or nexus must be established.²²

Efforts to Repay Debt and an Established Repayment Plan

Simply setting up a payment plan with a financial consultant, but not making payments under the plan would not be mitigating. The Appeal Board has said that the absence of a meaningful track record of repayments cannot reasonably suggest that an applicant has initiated a good faith effort to repay her creditors or otherwise resolve her debts.²³ Moreover, it held, promises of future repayment are not a substitute for a history of payment.²⁴ The Board noted that where an applicant's extensive debts are ongoing, and the applicant has made minimal efforts of repayment, a stated intent to pay debts and promises to pay are not a substitute for a consistent record of timely, remedial action.²⁵

The Board, however, found in favor of an applicant who was currently paying off his debt for federally insured loans which he had revived from a default status, and on which he had made consistent payments for a year, where he had two credit cards with balances which he paid regularly, and had acted on his own initiative with respect to other debts that were not part of the SOR.²⁶ In that case the Board held that although an applicant is not required as a matter of law to establish that he paid off each and every debt listed in the SOR, the concept of a meaningful track record necessarily includes evidence of actual debt reduction through payment of debts. All that is required, it held, is that an applicant demonstrates that he has established a plan to resolve his financial obligations and taken significant actions to implement that plan.²⁷ To be taken into consideration

²² ISCR Case No. 07-09304 at 4 (App. Bd., Oct. 6, 2008) (citing ISCR Case No. 06-23362 at 4 (App. Bd., Apr. 4, 2008)).

²³ *Id.* at 5. (citing ISCR Case No. 01-21386 at 3 (App. Bd., Jun. 11, 2003)).

²⁴ *Id.* at 5. (citing ISCR Case No. 02-31872 at 4 (App., Bd. May 24, 2005)). ADP Case No. 07-13041 at 3 (App. Bd., Sept. 19, 2008).

²⁵ *Id.* (citing ISCR Case No. 02-31872 at 4 (App. Bd., May 24, 2005). Accord. ISCR Case No. 01-08410 at 3 (App. Bd., May 8, 2002)). (A promise to pay unresolved debts in the future does not constitute evidence of reform or rehabilitation.)

²⁶ ISCR Case No. 07-06482 (App. Bd., May 21, 2008).

²⁷ *Id.* at 3. (citing ISCR Case No. 04-09684 at 2 (App. Bd., Jul. 6, 2006)). Accord, ISCR Case No. 08-06567 (App. Bd., Oct. 29, 2009).

is the entirety of an applicant's financial situation in evaluating the extent to which the planned reduction of debt is credible and realistic.²⁸

The Board has further held that there is no requirement that a plan must provide for payments on all outstanding debts simultaneously, or that the first debts actually paid in the carrying out of a reasonable debt plan must be the ones listed in the SOR. It is sufficient if there is a reasonable plan and concomitant conduct that provides for payments of the debts one at a time.²⁹ "Concomitant conduct" means actions which evidence a serious intent to effectuate the plan.³⁰

The Board affirmed a favorable decision in a case where the applicant had numerous unsatisfied debts, much of it originating during earlier periods of unemployment, but where she had not incurred substantial debt or unpaid loans in recent years since she became re-employed, where she no longer used credit cards, paying cash instead, and where she had retained the services of a financial counseling agency. The Board held that "an applicant is not required to show that she has completely paid off her indebtedness, only that she has established a reasonable plan to resolve her debts and has taken significant action to implement that plan."³¹

Passage of Time and the Statute of Limitations

Merely waiting for a debt to drop off a credit report by the passage of time is not a factor in the applicant's favor.³² With regard to the defense of statute of limitations, the Board has "consistently held that reliance upon such a remedy is not normally a substitute for good faith efforts to pay off debt," and does not necessarily demonstrate prudence, honesty, and reliability.³³ Therefore reliance on the statute of limitations is of diminished probative value in resolving trustworthiness concerns arising out of financial problems.³⁴

²⁸ *Ibid.*

²⁹ *Id.* at 3. (citing ISCR Case No. 06-25584 at 4 (App. Bd., Apr. 4, 2008)).

³⁰ ISCR Case No. 08-06567 at 3 (Oct. 29, 2009).

³¹ ISCR Case No. 06-12930 (App. Bd., Mar. 17, 2008) (citing ISCR Case No. 04-09684 at 2-3 (App. Bd., Jul. 6, 2006)).

³² ADP Case No. 07-13041 at 5 (App. Bd., Sept. 19, 2008) (citing ISCR Case No. 99-9020 at 5-6 (App. Bd., Jun. 4, 2001).); (citing ISCR Case No. 01-09691 at 3 (App. Bd., Mar. 27, 2003). ISCR Case No. 07-09966 at 3, f.n. 1 (App. Bd., Jun. 25, 2008). ISCR Case No. 07-08049 (App. Bd., Jul. 22, 2008).

³³ DOHA ISCR Case No. 07-16427 at 4 (App. Bd., Feb. 4, 2010) (citing ISCR Case No. 07-16841 at 4, App. Bd., Dec. 19, 2008).

³⁴ *Id.* (citing ISCR Case No. 03-20327 at 4 (App. Bd., Oct. 26, 2006)).

In rejecting the defense of statute of limitations, the Board denied that the purpose of a clearance proceeding was for collecting applicant's debts. Rather, it said, it was aimed at evaluating an applicant's judgment, reliability and trustworthiness. Even if a delinquent debt is legally unenforceable under state law, the Federal government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy the debt in a timely manner.³⁵

Evidence to Prove or Disprove Debts or Payment

The Appeal Board has held that adverse information from a credit report is normally sufficient evidence to support an allegation of debt.³⁶ But applicant's credible denial of listed debts is sufficient to refute the allegations of delinquent debts.³⁷ In another case, however, the Board held that it was not sufficient proof to show that a debt had been paid where the applicant offered only settlement agreements but gave no evidence that she accepted the offers or paid the debts, or where the applicant claimed that she did not recognize the creditors but did not take into account potential successors in interest (i.e. purchasers of the debt) to the original creditors.³⁸ Where an applicant contested a debt as not belonging to him, but did not demonstrate that he disputed that debt to the appropriate authorities, the Appeal Board did not credit that testimony.³⁹

The Appeal Board, in recent cases, has raised the evidentiary standard an applicant must meet to get a security clearance stating, "once a concern arises regarding an applicant's security clearance eligibility, there is a *strong presumption* against the grant or maintenance of a security clearance."⁴⁰ It held that although an applicant may indicate that he intends to pay off his debts, such statements of future intent to pay debts without corroborating evidence, such as consistent steps already taken,

³⁵ ADP Case No. 07-13041 at 5 (App. Bd., Sept. 19, 2008) (citing ISCR Case No. 99-9020 at 5-6 (App. Bd., Jun. 4, 2001) and ISCR Case No. 01-09691 at 3 (App. Bd., Mar. 27, 2003)); ISCR Case No. 07-09966 at 3, f.n. 1 (App. Bd., Jun. 25, 2008); ISCR Case No. 07-08049 (App. Bd., Jul. 22, 2008). ISCR Case No. 07-09966 (App. Bd., Jun. 25, 2008) (citing ISCR Case No. 01-09691 at 3 (App. Bd., Mar. 27, 2003); ISCR Case No. 00-0345 at 3 (App. Bd., Dec. 12, 2001); ISCR Case No. 99-9020 at 5-6 (App. Bd., Jun. 4, 2001)).

³⁶ ISCR Case No. 08-06058 at 6 (App. Bd., Sept. 21, 2009) (citing, ISCR Case No. 03-20327 at 3 (App. Bd., Oct. 26, 2006); ISCR Case No. 08-12184 (App. Bd., Jan. 7, 2010)).

³⁷ ISCR Case No. 08-06058 at 3 (App. Bd., Sept. 21, 2009).

³⁸ ISCR Case No. 08-07854 (App. Bd., Oct 2, 2009)

³⁹ ISCR Case No. 08-05069 (App. Bd., Feb. 20, 2009). ISCR Case No. 06-08904 (App. Bd., Nov. 28, 2007).

⁴⁰ ISCR Case No. 07-08049 (App. Bd., Jul. 22, 2008) (citing *Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990), cert denied, 499 U.S. 905 (1991)).

are entitled to little weight.⁴¹ Simply stated, The Appeal Board requires corroboration to disprove a debt but no such corroboration to prove its existence.

Good Faith Evidence of Repayment

The Appeal Board, in a number of cases, has attempted to define “good faith”. In a case where the applicant had paid off all of his debts except for one credit card for which he had established a repayment plan acceptable to the creditor, and was making payments on the plan, the Board held that was sufficient to show “good faith”. It addressed the meaning of “good faith effort” in the following manner:

In order to qualify for application of this mitigation 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 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 show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of this mitigating condition.⁴²

Satisfaction of a debt through an involuntary creditor’s garnishment is not the same as, or similar to, a good faith initiation of repayment by the debtor.⁴³ The timing of an applicant’s actions to resolve a debt is also a factor to be considered.⁴⁴ In a case where the applicant claimed that his debt to the IRS had been forgiven, the Board held that:

Even assuming that judicial enforcement of the debt has been precluded by the statute of limitations, we have consistently held that reliance upon such a remedy is not normally a substitute for good faith efforts to pay off debt.⁴⁵

⁴¹ *Id.* at 4 (citing ISCR Case No. 01-08410 at 3 (App. Bd., May 8, 2002)).

⁴² ISCR Case No. 06-14521 at 2-3 (App. Bd., Oct. 15, 2007) (citing ISCR Case No. 03-20327 at 4 (App. Bd., Oct. 26, 2006); ISCR Case No. 07-16427 at 4, f.n. 6 (App. Bd., Feb. 4, 2010); ISCR Case No. 07-10575 (App. Bd., Jul. 3, 2008)).

⁴³ ISCR Case No. 08-06058 at 6 (App. Bd., Sept. 21, 2009).

⁴⁴ ISCR Case No. 07-06482 (A.J. Decision, Feb. 12, 2008; App. Bd., May 21, 2008).

⁴⁵ ISCR Case No. 07-16427 at 4 (App. Bd., Feb. 4, 2010) (citing ISCR Case No. 07-16841 at 4 (App. Bd., Dec. 19, 2008)).

Despite the Board's statements that an applicant does not have to prove that all debts were paid so long as a payment plan is in place, it reiterated its position that only by paying all of one's debts, regardless of the circumstances in which they were incurred or the ability to repay them, can an applicant establish "good faith". In a case where the applicant had settled one debt but did not have sufficient funds to settle the remaining three, although they were unenforceable due to the statute of limitations, where the applicant had used his credit card to pay tuition costs and had paid the medical bills of his grandson who had a brain tumor, and where he had been fired for not having learned his job fast enough, the Board did not consider these to be circumstances beyond his control in paying all of his debts. The Board held that the applicant had not demonstrated a good faith effort to pay off his delinquent debts.⁴⁶

If one has sufficient assets to pay one's debts, failure to do so will result in a denial of a clearance.⁴⁷ The Appeal Board upheld the denial of a clearance where the applicant had entered into a repayment agreement with each of the creditors and made a small payment on each debt. It said the applicant's efforts to repay or resolve his debts was insufficient compared to his available income that he could have used to address his debts. Although the creditors were satisfied with this arrangement it was not enough to satisfy the Board.⁴⁸

Even proving that a person has reestablished his credit and is current in paying his bills will backfire with the Appeal Board. Where the applicant had numerous delinquent debts arising from a relationship with a former domestic partner who created much of the debt problem, and even though the applicant had established a current good credit rating as evidenced by her payment for housing, college tuition, and car payments, and being current on credit card debts, the Board ruled that simply demonstrated a capacity to pay her former debts, which she had not done. The Board held that the capacity to pay current debt demonstrated the applicant's failure to address her delinquent debt which, it held, is a continuing course of conduct "and which casts serious doubt on the extent to which she has acted responsibly with regard to that debt."⁴⁹ "Promises to pay are not a substitute for a consistent record of timely remedial action."⁵⁰

The DOHA Appeal Board often sounds like an ecclesiastical court of morality, rather than an evaluator of security risks. The Appeal Board reversed an initial decision favorable to the

⁴⁶ ISCR Case No. 07-10575 at 4 (App. Bd., Jul. 3, 2008) (citing ISCR Case No. 06-14521 at 2 (App. Bd., Oct. 15, 2007)).

⁴⁷ *Ibid*; ISCR Case No. 07-04192 (App. Bd., Apr. 24, 2008).

⁴⁸ ISCR Case No. 07-05352 (App. Bd., Jul. 16, 2008).

⁴⁹ ISCR Case No. 07-11814 at 4 (App. Bd., Aug. 29, 2008).

⁵⁰ ADP Case No. 06-14616 at 3 (App. Bd., Oct. 18, 2007) (citing ISCR Case No. 02-31812 at 4 (App. Bd., May 24, 2005)).

applicant, where the record showed she was attempting to work out a settlement with the creditors on a number of her debts. The Board held:

Department Counsel correctly argues that applicant's attempts to settle outstanding debts at a reduced amount speaks directly to an evaluation of the good faith nature of applicant's efforts to reduce indebtedness responsibly, given the record evidence of the fact that she has funds available to fully satisfy these debts, and the fact that applicant's attempts to settle the debts for a lesser amount resulted in their going unpaid. Thus, applicant's attempts to settle the debts in the manner she did was an important aspect of the case affecting an evaluation of mitigation that warranted recognition and analysis on the part of the judge.⁵¹

Thus, even where the creditors are willing to settle for partial payment, the Appeal Board will often insist on payment in full to approve a clearance.

Debt Incurred as a Result of Fraud

Being defrauded is no defense. Where an applicant became indebted on two mortgages that he incurred as a result of fraud, but where the fraud was "not daunting in its complexity, but was unreasonable on its face, especially to an applicant with experience in real estate matters," the Board reversed an initial favorable decision⁵². The import of that and similar rulings is that the holder of a security clearance must repay, in full, bank loans made even under fraudulent circumstances, and even when the debt is discharged under state law.⁵³

Similarly, where the applicant argued that he was defrauded by his uncle in the purchase of two houses, one of which was sold at a foreclosure sale, and where the uncle purchased a car in the applicant's name, and filed for bankruptcy in the applicant's name, the Board held that "even if one accepts applicant's contention that his uncle defrauded him during the course of their real estate transaction, the episode as a whole impugns applicant's judgment, which is the heart of Guideline F" and reversed the grant of a clearance.⁵⁴

⁵¹ ISCR Case No. 08-12184 at 6 (App. Bd., Jan. 7, 2010) (citing ISCR Case No. 07-16841 at 4 (App. Bd., Dec. 19, 2008)). Accord, ISCR Case No. 08-05216 (App. Bd., Jun. 10, 2009).

⁵² See, ISCR Case No. 08-08435 (App. Bd., Jul. 16, 2009) below, at pp. 38-39.

⁵³ ISCR Case No. 07-16841 at 5 (App. Bd., Dec. 19, 2008). (See, *supra* at f.n. 16)

⁵⁴ ISCR Case No. 06-23369 at 5 (App. Bd., Aug. 1, 2008). In this case the Appeal Board publicly admonished Administrative Judge Henry for her perceived failure to consider contrary record evidence, stating: "No benefit accrues from persistent disregard of agency policy and a superior tribunal". *Id.* at 6, f.n. 4.

The Board held in another fraud case that the fact that an applicant who lost title to his home as a result of a fraudulent transaction was evidence that he could not demonstrate sufficient judgment and reliability to be trusted with classified information.⁵⁵ The Board distinguished these cases from “one in which a fraud victim’s choices and judgment were reasonable on their face”.⁵⁶ Yet, contrary to its position in other fraud cases, in a case where the applicant still owed on three fraudulent mortgages, the Board inexplicably reversed the denial of the security clearance and remanded for further consideration.⁵⁷ Generally stated, the Appeal Board believes that if you are dumb enough to be defrauded, you are too dumb to hold a security clearance, except if it thinks otherwise.

Financial Counseling

When it comes to following the advice of a financial counselor, you are damned if you do and damned if you don’t. The Appeal Board is critical of applicants who do not seek the advice of credit counselors and debt management companies. (One of the mitigating factors of Guideline F is seeking debt counseling.)⁵⁸ It has held that engaging the services of some variety of a debt management agency in an effort to gain control over a financial situation does give an applicant credit towards mitigation.⁵⁹ But where an applicant showed that she was paying her current obligations in a timely manner, but based upon the advice from a credit counselor, she was not making payments on her past due debts as a strategy to raise her credit score, and that she intended to allow them to drop from her credit report with the passage of time based on that advice, the Appeal Board found that applicant did not show good faith in the resolution of her debt.⁶⁰ As is typical with debt counseling companies, an applicant stopped working with a “financial counseling” company because he paid a high upfront fee, but no money was being applied to his debts.⁶¹ Nevertheless the Board gave him no credit for trying to control his debt and upheld the denial of the clearance.⁶²

⁵⁵ ISCR Case No. 06-19154 at 6 (App. Bd., Apr. 9, 2008).

⁵⁶ ISCR Case No. 07-15321 (App. Bd., Dec. 15, 2008). (See, *below* at f.n.97).

⁵⁷ *Ibid.*

⁵⁸ Mitigating Condition (c).

⁵⁹ ADP Case No. 06-14616 (App. Bd., Oct. 18, 2007) (citing ISCR Case No. 03-23765 at 3 (App. Bd., Jan. 31, 2006); ISCR Case No. 06-12930 (App. Bd., Mar. 17, 2008)).

⁶⁰ ISCR Case No. 06-20062 at 2 (App. Bd., Jul. 15, 2008).

⁶¹ The FTC estimates that consumers have been charged \$14.4 million for debt repair services that were never received. *As Credit Scores Fall, Credit Repair Scams Flourish*, The Washington Post, pp. E-1, 6, September 11, 2010.

⁶² ISCR Case No. 08-00435 at 2 (App. Bd., Jan. 22, 2009).

Failure to File Tax Returns or Pay Back Taxes

Failure to file Federal or State tax returns in a timely manner, or failing to pay taxes even though the collection may be barred by the statute of limitations will bar granting a clearance.⁶³

ADMINISTRATIVE JUDGE INITIAL DECISIONS

The Appeal Board has repeatedly held that the initial decisions of administrative judges have no precedential value and that each case must be decided on its own merits, but that it “gives due consideration to these cases as well.”⁶⁴ Hearing Officer decisions are not binding either on the other Hearing Officers, Administrative Judges, or on the Board.⁶⁵ Nevertheless, the initial Administrative Judge decisions dealing with foreclosures and short sales were also reviewed to discern trends and how the administrative judges look at the various fact patterns. In most cases there were a number of considerations, both favoring and disfavoring granting a clearance. It is useful to see how the balance has been struck by the administrative judges for or against granting a clearance.

Decisions *granting* a clearance were reviewed to examine what factors were influential in the granting of the clearance. Decisions *denying* a clearance were also reviewed to examine what factors tipped the balance against granting a clearance at the initial hearing level. Cases which were appealed were examined to see what factors motivated Department Counsel to appeal, and the results of those appeals.

Administrative Judge Decisions Granting a Clearance Which Were Not Appealed

Twenty-four cases were reviewed dealing with foreclosures and short sales of homes or investment properties where clearances were *granted* and *not appealed*. These were examined for two purposes: first, to show what was sufficient to meet the initial challenge of convincing an Administrative Judge; and second, to see what facts were sufficient to satisfy Department Counsel not to appeal.

The similarity of all of these cases is that the applicants were victims of circumstances not of their own doing, they had not been speculators in the housing market who were caught in the bubble’s burst, they had not succumbed to fraudulent schemes “too good to be true” as a result of their own greed, and they had made a good faith effort to meet their other debts after the loss of their homes through foreclosure or short sale. A brief synopsis of these cases below gives some sense of

⁶³ ISCR Case No. 07-16427 at 2, 4 (App. Bd., Feb. 4, 2010).

⁶⁴ ISCR Case No. 09-03427 (App. Bd., Feb. 19, 2010).

⁶⁵ ISCR Case No. 08-08012 (App. Bd., Nov. 20, 2009) (citing ISCR Case No. 06-24121 at 2 (App. Bd., Feb. 5, 2008)); ISCR Case No. 08-03845 (App. Bd., Feb. 24, 2009).

the factual situations that have allowed clearances to be granted and not to be appealed by the government.

A clearance was granted in a case where three mortgages on the property were forgiven under California anti-deficiency law, and the applicant had to move to be closer to his family who were in ill health in another state;⁶⁶ in a case where the applicant became sick and lost his job, his fiancée moved out and he paid off the rest of his minor debts;⁶⁷ and where applicant's family depended on his wife's salary, but after she had surgery for a brain seizure and could no longer work, they could not meet their bills and the debt was without recourse under applicable state law.⁶⁸

Another case where a clearance was granted and not appealed was where applicant and her husband bought a home while the husband was in the military in another state, but instead of moving in with her, left her for "a new love interest" and refused to pay the mortgage on the home so the house was sold in foreclosure, but the proceeds were insufficient to pay the home equity line of credit which was in the husband's name and could not be resolved because the husband refused to cooperate.⁶⁹ Also, a clearance was granted where an applicant, who was twenty one years of age, allowed his parents to buy a home in his name, but without his knowledge not only did they not pay the mortgage, but also did not pay a number of credit cards they fraudulently opened in applicant's name, and when the applicant tried to sell the home in a short sale the parents would not move and he had to hire an attorney to evict them.⁷⁰ In another case, the applicant, who had successful experience in owning rental properties in one location, moved and purchased several other rental properties in a new area, but subsequently lost her job, and her tenants, who also lost their jobs, were unable to pay the rent, however applicant was current on her other debts.⁷¹

In still another case, a clearance was granted where the applicant, a retired Army officer, minister and college professor, incurred debts due to co-signing loans for his children, and had to assume custody of his five grandchildren.⁷² Also, where the applicant who had no other debt refinanced her home with an adjustable rate mortgage (also known as an "ARM") with a promise by the mortgage company that she could again refinance it, but when the time came for refinancing,

⁶⁶ ISCR Case No. 09-03773 (A.J. Decision, Jan. 29, 2010).

⁶⁷ ISCR Case No. 09-03271 (A.J. Decision, Jan. 25, 2010).

⁶⁸ ISCR Case No. 08-10013 (A.J. Decision, Jan. 15, 2010).

⁶⁹ ISCR Case No. 08-11533 (A.J. Decision, Jan. 14, 2010).

⁷⁰ ISCR Case No. 08-12181 (A.J. Decision, Dec. 29, 2009).

⁷¹ ISCR Case No. 09-01741 (A.J. Decision, Dec. 15, 2009).

⁷² ISCR Case No. 08-09622 (A.J. Decision, Nov. 30, 2009).

the mortgage company refused to refinance because the value of the home had dropped.⁷³ Another applicant was granted a clearance after a foreclosure where she moved out of her house because she needed to move to a different school district for the special education needs of her autistic son, but she was meeting or able to resolve all of her other debts.⁷⁴ A clearance was granted where the applicant, who had a house, moved to another city to get married, and he and his new wife bought another house and rented the first house, but the renters had to be evicted for non-payment of rent, and applicant's three year ARM reset at a higher rate doubling his mortgage payments, but he was protected under the state's anti-deficiency statute from any further claims.⁷⁵

In yet another case, the applicant bought a new home with the expectation of selling her old home, and the company selling the new home promised to assist in selling her old home but did not, and when the applicant and her spouse separated, the spouse did not make any further payments.⁷⁶ Also, a clearance was granted where the applicant purchased a new house but subsequently lost his job, and after foreclosure was released from any debt on the mortgage due to the state's antideficiency statute, and he had resolved his other indebtedness.⁷⁷

In a case where an applicant kept her clearance, she had moved to a new home with her current husband, and her daughter and son-in-law occupied the old home but did not pay rent and refused to move out, and applicant had to sue her daughter and son-in-law, and get a judgment⁷⁸. In another case, due to applicant's wife's loss of her job and her illness they were unable to remain current on their house payments and monthly bills, and eventually their house became "upside down," becoming worth less than the mortgage, yet applicant and his wife maintained regular contact with their creditors to resolve their other debts.⁷⁹ A clearance was granted where the applicant cosigned for a mortgage with her son for his house, but the son stopped paying the mortgage and did not tell the applicant, and she found out when she was contacted by an OPM security investigator.⁸⁰ In yet another case, the applicant and her husband bought her parents' house but subsequently her

⁷³ ISCR Case No. 08-11162 (A.J. Decision, Sept. 24, 2009).

⁷⁴ ISCR Case No. 08-10577 (A.J. Decision, Sept. 21, 2009).

⁷⁵ ISCR Case No. 08-08029 (A.J. Decision, Sept. 1, 2009).

⁷⁶ ISCR Case No. 08-11779 (A.J. Decision, Aug. 25, 2009).

⁷⁷ ISCR Case No. 08-08419 (A.J. Decision, Aug. 21, 2009).

⁷⁸ ISCR Case No. 08-09182 (A.J. Decision, Aug. 19, 2009).

⁷⁹ ISCR Case No. 08-08689 (A.J. Decision, Aug. 17, 2009).

⁸⁰ ISCR Case No. 08-08007 (A.J. Decision, Jun. 19, 2009).

husband left her, leaving her the sole breadwinner for herself and three children.⁸¹ In another case, after applicant remarried, he purchased a second home, was paying child support to his first wife and for another child outside of marriage, while at the same time was supporting his new family, but after he lost his job he was no longer able to make payments on their home.⁸²

In still another case, after a number of successful home purchases and sales applicant purchased a home, but when her boyfriend moved out and stopped making payments, she refinanced it but the mortgage lender made an error and when corrected, her monthly mortgage payment doubled which she was unable to continue paying.⁸³

An applicant in another case was unable to make payments on the mortgage which he had refinanced several times to purchase vehicles for work which did not materialize in the face of a slumping economy.⁸⁴ Another applicant purchased a property for investment, but within three months the bottom fell out of the real estate market and the property declined in value, the applicant's first renter failed to pay rent and was evicted, and another renter had to have all rents returned when the rent-to-sale deal failed to close.⁸⁵ In yet another case, the applicant bought a house with her husband who was an alcoholic and who subsequently left her and refused to pay child support or make payments on the house mortgage or for the cars that they purchased.⁸⁶ In the last case in this category, applicant, a retired Navy Senior Chief, moved from his home in Washington State to New York putting his Washington house up for sale to purchase a New York house, but where the New York housing market was more expensive than he expected and he was not reimbursed by his employer for the move, he and his family eventually moved to California to reduce living expenses.⁸⁷

The influencing factors in all of the cases where clearances were granted and not appealed was that applicants found themselves unable to meet their home mortgage payments as a result of factors beyond their control such as illness, loss of employment, or theft by close family members, and they had made an effort to pay outstanding debts. Absent were cases of speculators in the real estate bubble who were caught in the downturn, people who fell for fraudulent schemes "too good to be true," and people who made no attempt to meet their debts, waiting for them to be written off.

⁸¹ ISCR Case No. 08-10002 (A.J. Decision, May 27, 2009).

⁸² ISCR Case No. 08-06005 (A.J. Decision, Apr. 30, 2009).

⁸³ ISCR Case No. 08-09662 (A.J. Decision, Feb. 26, 2009).

⁸⁴ ISCR Case No. 08-06296 (A.J. Decision, Jan. 28, 2009).

⁸⁵ ISCR Case No. 07-15050 (A.J. Decision, Oct. 31, 2008).

⁸⁶ ISCR Case No. 07-01967 (A.J. Decision, Feb. 21, 2008).

⁸⁷ ISCR Case No. 07-01906 (A.J. Decision, Jan. 18, 2008).

Administrative Judge Decisions Denying a Clearance

There were also reviewed, during the 2006-2010 period, twenty-four Administrative Judge initial decisions concerning mortgage foreclosures and short sales where a clearance was *denied*. These were reviewed to see what distinguished them from the cases where clearances were *granted* by an Administrative Judge. In these latter cases, generally the applicants had no plan to pay their remaining debts, their losses were the result of misguided greed, or they were real estate speculators who mistimed the market. Examples of these cases follow.

Typically, clearances were denied where the applicant gave no plan for how she would address debts that were not discharged in bankruptcy, leaving multiple debts unaddressed,⁸⁸ where the applicant was delinquent in filing his tax returns,⁸⁹ where an applicant and his wife were found to have exercised poor judgment by consistently spending above their means by purchasing a large house when they were both unemployed, taking expensive vacations, and having unreasonably high grocery bills,⁹⁰ and where the applicant walked away from two investment properties whose value had declined because “it is not prudent to invest money into a property that is losing value,” even though the applicant had sufficient funds to pay the mortgage on the property.⁹¹

In other cases a clearance was denied where the applicant speculated in the real estate market, buying properties beyond his ability to pay for them hoping to flip them in the short term, but when the market went bust he could not continue making the mortgage payments,⁹² where the applicant had a series of small debts for which she did not present evidence of payment, and where it was not likely that she would be able to resolve those debts in the near future.⁹³ Other cases where a clearance was denied was where the applicant who had signed a mortgage on the house his brother

⁸⁸ ISCR Case No. 09-02658 (A.J. Decision, Apr. 14, 2010); ISCR Case No. 08-11786 (A.J. Decision, Mar. 19, 2010); ISCR Case No. 09-02753 (A.J. Decision, Feb. 24, 2010); ISCR Case No. 09-01382 (A.J. Decision, Jan. 15, 2010); ISCR Case No. 08-01158 (A.J. Decision, Sept. 25, 2008); ISCR Case No. 07-14841 (A.J. Decision, Sept. 9, 2008); ISCR Case No. 07-06484 (A.J. Decision, Dec. 31, 2007).

⁸⁹ ISCR Case No. 09-05242 (A.J. Decision, Apr. 16, 2010).

⁹⁰ ISCR Case No. 09-04087 (A. J. Decision, Apr. 13, 2010). Accord, ISCR Case No. 08-09899 (A.J. Decision, Aug. 24, 2009); ISCR Case No. 08-00832 (A.J. Decision, Dec. 31, 2008); ADP Case No. 06-23337 (Mar. 26, 2008).

⁹¹ ISCR Case No. 08-11614 (A.J. Decision, Apr. 7, 2010).

⁹² ISCR Case No. 09-00395 (A.J. Decision, Mar. 18, 2010). Accord, ISCR Case No. 08-08980 (A.J. Decision, Oct. 13, 2009); ISCR Case No. 08-08012 (A.J. Decision, Aug. 31, 2009); ISCR Case No. 08-10264 (A.J. Decision, July 15, 2009); ISCR Case No. 08-09808 (A.J. Decision, Jun. 22, 2009).

⁹³ ISCR Case No. 08-10598 (A.J. Decision, Feb. 23, 2010).

lived in defaulted on the home equity loan and had no plan to pay it, but had taken out other loans since then,⁹⁴ and where the applicant was a victim of a mortgage fraud where her judgment was swayed by the temptation of easy money but where a little due diligence up front would have prevented the scam.⁹⁵ Still another case in which a clearance was denied was where the applicant ran a real estate franchise business from 2002 to 2007, but when the real estate market turned down he was unable to meet his business expenses because he had not set aside any cushion to cover possible downturn during the good years.⁹⁶

Administrative Judge Decisions Granting Clearances Which Were Appealed

During the four and a half year period reviewed from 2006 to June, 2010 there were fourteen cases involving short sales or foreclosures where the Administrative Judges granted clearances but which were appealed by Department Counsel. These cases were examined to determine what factors motivated Department Counsel to appeal when they did not do so in other cases. Of these cases, eleven were reversed by the Appeal Board, and three were affirmed.⁹⁷

In a case where the judge found that the applicant had made heroic efforts to meet her obligations after her husband was injured and could no longer work, and lived in near-poverty for several years, Department Counsel challenged several assumptions by the judge concerning the use of a personal injury settlement fund for payment of all the medical bills. The Appeal Board reversed, accepting that argument, as well as Department Counsel's argument that applicant's attempt to settle her outstanding debts at a reduced amount affected the good faith nature of applicant's efforts, given the evidence that she had funds available to satisfy the debts.⁹⁸ In another case the Administrative Judge found that applicant was duped in a "particularly slick" real estate con that appeared reasonable under the circumstances at the time. Department Counsel appealed and the Appeal Board reversed, finding that the record as a whole suggested a plan which was not daunting in its complexity but unreasonable on its face, especially to a person like applicant who had some experience in real estate matters.⁹⁹ Similarly, in another case the Board reversed holding that the

⁹⁴ ISCR Case No. 09-03724 (A.J. Decision, Jan. 12, 2010).

⁹⁵ ISCR Case No. 08-05216 (A.J. Decision, Apr. 8, 2009).

⁹⁶ ISCR Case No. 08-07732 (A.J. Decision, Mar. 13, 2009).

⁹⁷ There was only one case during that period where an Administrative Judge denied a clearance which was reversed by the Appeal Board. That case was remanded and clearance was granted on remand. ISCR Case No. 07-15321 (A.J. Decision, Aug. 26, 2008; App. Bd., Decision reversing, Dec. 15, 2008; A.J. Decision, on remand, Jan. 30, 2009)..

⁹⁸ ISCR Case No. 08-12184 (A.J. Decision, Sept. 16, 2009; App. Bd., Jan.7, 2010).

⁹⁹ ISCR Case No. 08-08435 (A.J. Decision, Mar. 31, 2009; App. Bd., Jul. 16, 2009).

applicant, an experienced business man, should have been aware of the fraudulent nature of the offer to sell twenty-two rental units, particularly since he failed to make a due diligence inquiry.¹⁰⁰

In a case where the Administrative Judge held that applicant had not made any payments on her payment plan, but was convinced that she would pay her debts, the Appeal Board reversed, finding that even though the applicant had made no payments on her debts she had the means to do so and had not exhibited a good faith effort.¹⁰¹ In another case, the Appeal Board rejected the judge's whole person analysis where the applicant had tax liens and other debts but did not present any corroborating evidence regarding his efforts to pay off these debts.¹⁰² The Appeal Board also reversed the grant of a clearance, finding that the use of credit cards to pay tuition costs, and having been fired due to not mastering his job were not factors outside of the applicant's control. Although the applicant had sufficient assets and income to pay off his debts, by not doing so the Board held, he did not show reasonable prudence and honesty.¹⁰³

In still another case, the applicant claimed that he had entered into an arrangement to transfer title to his house without getting payment, alleging that he had been defrauded. He had not made arrangements to pay his other debts. The Appeal Board reversed the favorable ruling, finding that the arrangement with the buyer of his home undercut his effort to show sufficient judgment and reliability to be trusted with classified information.¹⁰⁴ In another case where the applicant had been defrauded, the applicant had cosigned a mortgage on the home in which his uncle lived, but the uncle not only did not make payments on the loans, but also filed bankruptcies in applicant's name, and purchased a vehicle in applicant's name without his knowledge. The Administrative Judge found that the applicant had taken sufficient steps to resolve the debts, which resulted from the theft and fraud by his uncle. The Board reversed, however, holding that even if the uncle defrauded him with regard to the real estate transaction, the episode impugned applicant's judgment.¹⁰⁵

In a case where Administrative Judge Henry granted a clearance to an applicant who did not pay two old debts, but kept up to date on her current debts and did not have the resources to pay both the old debts and the current debts and support her family, the Board reversed and remanded for further consideration of the old debts. (On remand, Administrative Judge Henry again granted the clearance based on applicant's efforts to keep current, describing the societal value of recognizing

¹⁰⁰ ISCR Case No. Decision, Sept. 12, 2008; App. Bd., Dec. 19, 2008). This case is discussed above at f.n. 16, 33, 51, and 53.

¹⁰¹ ISCR Case No. 07-09304 (A.J. Decision, Jun. 19, 2008; App. Bd., Oct. 6, 2008).

¹⁰² ISCR Case No. 07-08049 (A.J. Decision, Apr. 10, 2008; App. Bd., Jul. 22, 2008).

¹⁰³ ISCR Case No. 07-10575 (A.J. Decision, Feb. 27, 2008; App. Bd., Jul. 3, 2008).

¹⁰⁴ ISCR Case No. 06-19154 (A.J. Decision, Nov. 30, 2007; App. Bd., Apr. 9, 2008).

¹⁰⁵ ISCR Case No. 06-23369 (A.J. Decision, Feb. 21, 2008; App. Bd., Aug. 1, 2008).

the statute of limitations.)¹⁰⁶ Where the Administrative Judge granted a clearance, holding that the statute of limitations removed potential vulnerability for improper financial inducements, and that the applicant was not aware of certain debts, the Board reversed, finding that the statute of limitations was not a defense and that lack of awareness impugned the applicant's judgment and reliability.¹⁰⁷

In yet another case, the Administrative Judge granted a clearance to the applicant because the debts from her first marriage were not paid after her second husband became ill and could no longer work, and they did not have two incomes to pay the debts and support the family. The Appeal Board reversed, saying that the debts had occurred prior to the illness and were not medical bills and therefore did not support the whole person analysis.¹⁰⁸

In only four of the fourteen cases where clearances were granted and then appealed were the initial decisions affirmed by the Appeal Board, the last being May, 2008. The Appeal Board has not affirmed a favorable decision that was appealed by the government in almost two and a half years to the time of the writing of this article. Surprisingly, one of the favorable decisions affirmed was a decision by Administrative Judge Henry, the most reversed of all of the Administrative Judges.¹⁰⁹ In one of the four cases where the initial decision was affirmed on appeal, the applicant's employment fluctuated and she was unable to keep up with her debts while unemployed. She eventually initiated payments and continued a program to pay off her debts.¹¹⁰ The government argued that the judge's whole person finding was arbitrary, capricious, and contrary to law, however, the Appeal Board upheld the decision, finding that the applicant was not required to show she had completely paid off her indebtedness, only that she had established a reasonable plan to resolve her debts and had taken action to implement that plan. The judge's decision was sustained based on the whole person analysis.¹¹¹ In the second case where the grant of a clearance was affirmed, the applicant had fallen behind in his debts as a result of a divorce. However, he remarried and moved on, taking on new responsibilities with his second wife and child, and implemented a plan to pay off his debts.¹¹² Department Counsel challenged the Administrative Judge's whole person analysis. The

¹⁰⁶ ISCR Case No. 07-11814 (A.J. Decision, May 14, 2008; App. Bd., Aug. 29, 2008; A.J. Decision on remand, Sept. 16, 2008).

¹⁰⁷ ADP Case No. 06-14616 (A.J. Decision, Apr. 11, 2007; App. Bd., Oct. 18, 2007).

¹⁰⁸ ADP Case No. 06-19856 (A.J. Decision, May 31, 2007; App. Bd., Nov. 28, 2007).

¹⁰⁹ ISCR Case No. 06-12930 (A.J. Decision, Aug. 6, 2007; App. Bd., Mar. 17, 2008).

¹¹⁰ ISCR Case No. 06-12930 (A.J. Decision, Aug. 6, 2007).

¹¹¹ ISCR Case No. 06-12930 (App. Bd., Mar. 17, 2008) Citing ISCR Case No. 04-09684 at 2-3 App. Bd. Jul. 6, 2006).

¹¹² ISCR Case No. 06-14521 (A.J. Decision, Mar. 30, 2007).

Appeal Board found that applicant had been making a good faith effort to pay his debts and supported the favorable finding.¹¹³

In the third case where a favorable decision was sustained the Administrative Judge found that the applicant had established a workable payment plan for his debts and was paying them off. Department Counsel argued that there was no reasonable basis to dispute any of the debts, that applicant had not demonstrated a meaningful track record, and that an \$18,000 debt for which applicant established a workable payment plan was not one of the debts listed in the SOR. The Appeal Board affirmed, holding that there was no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.¹¹⁴ In the fourth case where the Board affirmed the grant of a clearance applicant testified that she was misled by an insurance company after she totaled her vehicle, and thought the insurance company had paid off the loan balance only to find out later that it did not. Department Counsel argued that the fact that the debt appeared on earlier credit report but not on a later credit reports was grounds to deny her a clearance. The Appeal Board disagreed and affirmed the favorable decision.¹¹⁵

THE VALUE OF HAVING LEGAL COUNSEL

The problem in debt cases is that applicants who do not have money to pay their debts generally do not have money to hire legal counsel, and try to present their case themselves. But in case after case, *pro se* applicants have been denied a clearance because they have not presented sufficient witnesses or documents to support their case. Generally, experienced counsel know how to gather and present the evidence required to prove a claim or present a defense that untrained applicants are not trained or prepared to do. In this regard, the Appeal Board has held that while the standards of presentation are relaxed for *pro se* applicants, they still must meet the evidentiary requirements to prove their case.¹¹⁶ Where applicants represented themselves, four favorable decisions were affirmed and no unfavorable decisions were reversed.

At the initial hearing level, in fifty-one cases, applicants represented themselves, and in eleven they were represented by counsel. Of those eleven represented by counsel, nine applicants were granted clearances, and two were denied. Of the fifty-one applicants who represented themselves, twenty-nine were granted clearances and twenty-two were denied a clearance. Twelve of the *pro se* cases granting a clearance were reversed on appeal. At the Appeal Board, applicants had legal counsel in thirteen of the seventy-one cases. In only one of the cases where counsel was present was an adverse decision reversed, but in another, a favorable decision was reversed.

¹¹³ ISCR Case No. 06-14521 (App. Bd., Oct. 15, 2007).

¹¹⁴ ISCR Case No. 07-06482 (A.J. Decision, Feb. 12, 2008; App. Bd., May 21, 2008).

¹¹⁵ ISCR Case No. 07-01979 (A.J. Decision, Dec. 20, 2007; App. Bd., Apr. 9, 2008).

¹¹⁶ ISCR Case No. 02-17574 (App. Bd. July 24, 2006); ISCR Case No. 03-21216 (App. Bd. July 10, 2007).

Having legal counsel at the initial hearing level clearly tips the balance in favor of a clearance being granted. However, by the time a case reaches the Appeal Board, having legal counsel does not make a difference. Thus, at the Administrative Judge level the chance of getting a favorable decision rose from fifty-seven percent without counsel, to eighty-two percent with counsel. At the Appeal Board having counsel appears to have made no difference in the outcome.

CONCLUSION

In comparing the favorable decisions which the Appeal Board sustained to the favorable decisions it has reversed, one can only conclude that the odds of a reversal are unpredictable. The Board's decisions are a reflection of what it thinks, in any given case, support a finding of good faith and moral behavior. On that slender thread hangs the government's defense contractor workforce.

APPENDIX A

GUIDELINE F - APPEAL BOARD DECISIONS

SORTED BY CASE NUMBER

| Case No. | Date of Decision | Administrative Judge | Denial Aff. | Denial Rev. | Grant Aff. | Grant Rev. | Pro Se | With Counsel | Remanded |
|----------|------------------|----------------------|-------------|-------------|------------|------------|--------|--------------|------------------|
| 09-04380 | 2/18/10 | Heiny | Y | | | | Y | | |
| 09-03427 | 2/19/10 | O'Brien | Y | | | | | Y | |
| 09-02045 | 11/2/09 | O'Brien | Y | | | | Y | | |
| 09-00798 | 10/6/09 | Ricciardello | Y | | | | Y | | |
| 08-12184 | 1/7/10 | Henry | | | | Y | | Y | |
| 08-10238 | 12/18/09 | Wesley | Y | | | | Y | | |
| 08-09899 | 10/13/09 | Ricciardello | Y | | | | Y | | |
| 08-09808 | 9/21/09 | Wesley | Y | | | | | Y | |
| 08-09704 | 3/31/10 | Henry | Y | | | | Y | | |
| 08-09569 | 1/7/10 | Foreman | Y | | | | Y | | |
| 08-09362 | 2/19/10 | Mogul | Y | | | | Y | | |
| 08-09251 | 2/3/10 | Henry | Y | | | | | Y | |
| 08-08435 | 7/16/09 | Marshall | | | | Y | Y | | |
| 08-08012 | 11/20/09 | Harvey | Y | | | | | Y | |
| 08-07904 | 3/3/10 | Curry | Y | | | | Y | | |
| 08-07584 | 10/2/09 | Metz | Y | | | | Y | | |
| 08-07486 | 5/5/09 | Lynch | Y | | | | Y | | |
| 08-07043 | 7/21/09 | Anthony | Y | | | | Y | | |
| 08-06875 | 10/29/09 | Anthony | Y | | | | Y | | |
| 08-06591 | 10/16/09 | Harvey | Y | | | | Y | | |
| 08-06582 | 4/3/09 | Anthony | Y | | | | Y | | |
| 08-06567 | 10/29/09 | Wesley | | | | | Y | | Adverse remand |
| 08-06058 | 9/21/09 | Henry | | | | | Y | | Favorable Remand |

| Case No. | Date of Decision | Administrative Judge | Denial Aff. | Denial Rev. | Grant Aff. | Grant Rev. | Pro Se | With Counsel | Remanded |
|----------|------------------|----------------------|-------------|-------------|------------|------------|--------|--------------|------------------|
| 08-05846 | 7/7/09 | Lynch | Y | | | | Y | | |
| 08-05344 | 2/3/10 | Crean | Y | | | | | Y | |
| 08-05216 | 6/10/09 | Hogan | Y | | | | Y | | |
| 08-05069 | 2/20/09 | Marshall | Y | | | | Y | | |
| 08-04889 | 4/23/09 | Dam | Y | | | | Y | | |
| 08-03845 | 2/24/09 | Anthony | Y | | | | | Y | |
| 08-01014 | 9/9/09 | Loughran | Y | | | | | Y | |
| 08-00472 | 1/26/10 | Matchinski | Y | | | | | Y | |
| 08-00435 | 1/22/09 | Lynch | Y | | | | Y | | |
| 08-00344 | 3/9/09 | Mason | Y | | | | Y | | |
| 07-17806 | 11/21/08 | Malone | Y | | | | Y | | |
| 07-16841 | 12/19/08 | Henry | | | | Y | Y | | |
| 07-16427 | 2/4/10 | Ross | | | | Y | Y | | |
| 07-15321 | 12/15/08 | Ablard | | | | | Y | | Adverse Remand |
| 07-15062 | 3/23/09 | O'Brien | Y | | | | Y | | |
| 07-13766 | 11/12/08 | Henry | | | | Y | Y | | |
| 07-13041 | 10/19/08 | Henry | | | | Y | Y | | |
| 07-11814 | 8/29/08 | Henry | | | | | Y | | Favorable remand |
| 07-10575 | 7/3/08 | Braeman | | | | Y | Y | | |
| 07-10312 | 7/15/08 | Foreman | Y | | | | Y | | |
| 07-09966 | 6/25/08 | Hogan | Y | | | | Y | | |
| 07-09815 | 1/30/09 | Testan | Y | | | | Y | | |
| 07-09304 | 10/6/08 | Dam | | | | Y | Y | | |
| 07-08049 | 7/22/08 | Henry | | | | Y | Y | | |
| 07-07883 | 3/9/09 | Leonard | Y | | | | Y | | |

| Case No. | Date of Decision | Administrative Judge | Denial Aff. | Denial Rev. | Grant Aff. | Grant Rev. | Pro Se | With Counsel | Remanded |
|--------------|------------------|----------------------|-------------|-------------|------------|------------|--------|--------------|----------|
| 07-06482 | 5/21/08 | Howe | | | Y | | Y | | |
| 07-06205 | 8/7/08 | Heiny | Y | | | | Y | | |
| 07-05434 | 2/24/09 | Matchinski | Y | | | | Y | | |
| 07-05352 | 7/16/08 | Harvey | Y | | | | Y | | |
| 07-05036 | 5/23/08 | Lokey-Anderson | Y | | | | Y | | |
| 07-04192 | 4/24/08 | Loughran | Y | | | | | Y | |
| 07-04021 | 5/16/08 | Foreman | Y | | | | Y | | |
| 07-01979 | 4/9/08 | Heiny | | | Y | | Y | | |
| 06-25584 | 4/4/08 | Mogul | | Y | | | | Y | |
| 06-23369 | 8/1/08 | Ablard | | | | Y | Y | | |
| 06-23362 | 4/4/08 | Lokey-Anderson | | | | Y | | Y | |
| 06-20189 | 5/21/08 | Hogan | Y | | | | | Y | |
| 06-20062 | 7/15/08 | Lynch | Y | | | | Y | | |
| 06-19856 | 11/28/07 | Williams | | | | Y | Y | | |
| 06-19154 | 4/9/08 | Lokey-Anderson | | | | Y | Y | | |
| 06-14616 | 10/18/07 | Henry | | | | Y | Y | | |
| 06-14521 | 10/15/07 | Leonard | | | Y | | Y | | |
| 06-12930 | 3/17/08 | Henry | | | Y | | Y | | |
| 06-11903 | 4/7/08 | Matchinski | Y | | | | Y | | |
| 06-10320 | 11/7/07 | Lynch | Y | | | | Y | | |
| 06-08904 | 11/28/07 | Matchinski | Y | | | | Y | | |
| 06-00635 | 1/17/08 | Dam | Y | | | | Y | | |
| ADP 06-23337 | 7/8/08 | Rivera | Y | | | | Y | | |
| TOTAL | 71 | | 48 | 1 | 4 | 14 | 58 | 13 | 4 |

APPENDIX B

GUIDELINE F - APPEAL BOARD DECISIONS

SORTED BY DATE

| Date of Decision | Case No. | Administrative Judge | Denial Aff. | Denial Rev. | Grant Aff. | Grant Rev. | Pro Se | With Counsel | Remanded |
|------------------|----------|----------------------|-------------|-------------|------------|------------|--------|--------------|------------------|
| 3/31/10 | 08-09704 | Henry | Y | | | | Y | | |
| 3/3/10 | 08-07904 | Curry | Y | | | | Y | | |
| 2/19/10 | 09-03427 | O'Brien | Y | | | | | Y | |
| 2/19/10 | 08-09362 | Mogul | Y | | | | Y | | |
| 2/18/10 | 09-04380 | Heiny | Y | | | | Y | | |
| 2/4/10 | 07-16427 | Ross | | | | Y | Y | | |
| 2/3/10 | 08-09251 | Henry | Y | | | | | Y | |
| 2/3/10 | 08-05344 | Crean | Y | | | | | Y | |
| 1/26/10 | 08-00472 | Matchinski | Y | | | | | Y | |
| 1/7/10 | 08-12184 | Henry | | | | Y | | Y | |
| 1/7/10 | 08-09569 | Foreman | Y | | | | Y | | |
| 12/18/09 | 08-10238 | Wesley | Y | | | | Y | | |
| 11/20/09 | 08-08012 | Harvey | Y | | | | | Y | |
| 11/2/09 | 09-02045 | O'Brien | Y | | | | Y | | |
| 10/29/09 | 08-06875 | Anthony | Y | | | | Y | | |
| 10/29/09 | 08-06567 | Wesley | | | | | Y | | Adverse remand |
| 10/16/09 | 08-06591 | Harvey | Y | | | | Y | | |
| 10/13/09 | 08-09899 | Ricciardello | Y | | | | Y | | |
| 10/6/09 | 09-00798 | Ricciardello | Y | | | | Y | | |
| 10/2/09 | 08-07584 | Metz | Y | | | | Y | | |
| 9/21/09 | 08-09808 | Wesley | Y | | | | | Y | |
| 9/21/09 | 08-06058 | Henry | | | | | Y | | Favorable Remand |
| 9/9/09 | 08-01014 | Loughran | Y | | | | | Y | |

| Date of Decision | Case No. | Administrative Judge | Denial Aff. | Denial Rev. | Grant Aff. | Grant Rev. | Pro Se | With Counsel | Remanded |
|------------------|----------|----------------------|-------------|-------------|------------|------------|--------|--------------|------------------|
| 7/21/09 | 08-07043 | Anthony | Y | | | | Y | | |
| 7/16/09 | 08-08435 | Marshall | | | | Y | Y | | |
| 7/7/09 | 08-05846 | Lynch | Y | | | | Y | | |
| 6/10/09 | 08-05216 | Hogan | Y | | | | Y | | |
| 5/5/09 | 08-07486 | Lynch | Y | | | | Y | | |
| 4/23/09 | 08-04889 | Dam | Y | | | | Y | | |
| 4/3/09 | 08-06582 | Anthony | Y | | | | Y | | |
| 3/23/09 | 07-15062 | O'Brien | Y | | | | Y | | |
| 3/9/09 | 08-00344 | Mason | Y | | | | Y | | |
| 3/9/09 | 07-07883 | Leonard | Y | | | | Y | | |
| 2/24/09 | 07-05434 | Matchinski | Y | | | | Y | | |
| 2/24/09 | 08-03845 | Anthony | Y | | | | | Y | |
| 2/20/09 | 08-05069 | Marshall | Y | | | | Y | | |
| 1/30/09 | 07-09815 | Testan | Y | | | | Y | | |
| 1/22/09 | 08-00435 | Lynch | Y | | | | Y | | |
| 12/19/08 | 07-16841 | Henry | | | | Y | Y | | |
| 12/15/08 | 07-15321 | Ablard | | | | | Y | | Adverse Remand |
| 11/21/08 | 07-17806 | Malone | Y | | | | Y | | |
| 11/12/08 | 07-13766 | Henry | | | | Y | Y | | |
| 10/19/08 | 07-13041 | Henry | | | | Y | Y | | |
| 10/6/08 | 07-09304 | Dam | | | | Y | Y | | |
| 8/29/08 | 07-11814 | Henry | | | | | Y | | Favorable remand |
| 8/7/08 | 07-06205 | Heiny | Y | | | | Y | | |
| 8/1/08 | 06-23369 | Ablard | | | | Y | Y | | |
| 7/22/08 | 07-08049 | Henry | | | | Y | Y | | |

| Date of Decision | Case No. | Administrative Judge | Denial Aff. | Denial Rev. | Grant Aff. | Grant Rev. | Pro Se | With Counsel | Remanded |
|------------------|--------------|----------------------|-------------|-------------|------------|------------|--------|--------------|----------|
| 7/16/08 | 07-05352 | Harvey | Y | | | | Y | | |
| 7/15/08 | 07-10312 | Foreman | Y | | | | Y | | |
| 7/15/08 | 06-20062 | Lynch | Y | | | | Y | | |
| 7/8/08 | ADP 06-23337 | Rivera | Y | | | | Y | | |
| 7/3/08 | 07-10575 | Braeman | | | | Y | Y | | |
| 6/25/08 | 07-09966 | Hogan | Y | | | | Y | | |
| 5/23/08 | 07-05036 | Lokey-Anderson | Y | | | | Y | | |
| 5/21/08 | 07-06482 | Howe | | | Y | | Y | | |
| 5/21/08 | 06-20189 | Hogan | Y | | | | | Y | |
| 5/16/08 | 07-04021 | Foreman | Y | | | | Y | | |
| 4/24/08 | 07-04192 | Loughran | Y | | | | | Y | |
| 4/9/08 | 06-19154 | Lokey-Anderson | | | | Y | Y | | |
| 4/9/08 | 07-01979 | Heiny | | | Y | | Y | | |
| 4/7/08 | 06-11903 | Matchinski | Y | | | | Y | | |
| 4/4/08 | 06-25584 | Mogul | | Y | | | | Y | |
| 4/4/08 | 06-23362 | Lokey-Anderson | | | | Y | | Y | |
| 3/17/08 | 06-12930 | Henry | | | Y | | Y | | |
| 1/17/08 | 06-00635 | Dam | Y | | | | Y | | |
| 11/28/07 | 06-08904 | Matchinski | Y | | | | Y | | |
| 11/28/07 | 06-19856 | Williams | | | | Y | Y | | |
| 11/7/07 | 06-10320 | Lynch | Y | | | | Y | | |
| 10/18/07 | 06-14616 | Henry | | | | Y | Y | | |
| 10/15/07 | 06-14521 | Leonard | | | Y | | Y | | |
| TOTAL | 71 | | 48 | 1 | 4 | 14 | 58 | 13 | 4 |

APPENDIX C

GUIDELINE F - ADMINISTRATIVE JUDGE DECISIONS

SORTED BY CASE NUMBER

| Case No. | Date of Decision | Admin. Judge | Clearance Granted | Clearance Denied | Pro Se | With Counsel | Appealed and Affirmed | Appealed and Reversed | No Appeal |
|----------|------------------|----------------|-------------------|------------------|--------|--------------|-----------------------|-----------------------|-----------|
| 09-05242 | 4/16/10 | Ricciardello | | Y | Y | | | | X |
| 09-04087 | 4/13/10 | Matchinski | | Y | Y | | | | X |
| 09-03773 | 1/29/10 | Harvey | Y | | Y | | | | X |
| 09-03724 | 1/12/10 | Ricciardello | | Y | Y | | | | X |
| 09-03271 | 1/25/10 | Lokey-Anderson | Y | | Y | | | | X |
| 09-02753 | 2/24/10 | Curry | | Y | Y | | | | X |
| 09-02658 | 4/14/10 | Loughran | | Y | Y | | | | X |
| 09-01741 | 12/15/09 | Anthony | Y | | Y | | | | X |
| 09-01382 | 1/15/10 | Dam | | Y | Y | | | | X |
| 09-00395 | 3/18/10 | O'Brien | | Y | | Y | | | X |
| 08-12184 | 9/16/09 | Henry | Y | | | Y | | Y | |
| 08-12181 | 12/29/09 | Anthony | Y | | | Y | | | X |
| 08-11786 | 3/19/10 | Henry | | Y | Y | | | | X |
| 08-11779 | 8/25/09 | Heiny | Y | | | Y | | | X |
| 08-11614 | 4/7/10 | Loughran | | Y | Y | | | | X |
| 08-11533 | 1/14/10 | Anthony | Y | | Y | | | | X |
| 08-11162 | 9/24/09 | Mogul | Y | | | Y | | | X |
| 08-10598 | 2/23/10 | Ricciardello | | Y | Y | | | | X |
| 08-10577 | 9/21/09 | Leonard | Y | | | Y | | | X |
| 08-10264 | 7/15/09 | Wesley | | Y | Y | | | | X |
| 08-10013 | 1/15/10 | Ross | Y | | | Y | | | X |
| 08-10002 | 5/27/09 | Lokey-Anderson | Y | | Y | | | | X |
| 08-09899 | 8/24/09 | Ricciardello | | Y | Y | | Y | | |
| 08-09808 | 6/22/09 | Wesley | | Y | Y | | Y | | |
| 08-09662 | 2/26/09 | Gales | Y | | Y | | | | X |
| 08-09622 | 10/30/09 | Mason | Y | | Y | | | | X |
| 08-09182 | 8/19/09 | Hogan | Y | | | Y | | | X |
| 08-08980 | 10/13/09 | Anthony | | Y | Y | | | | X |

| Case No. | Date of Decision | Admin. Judge | Clearance Granted | Clearance Denied | Pro Se | With Counsel | Appealed and Affirmed | Appealed and Reversed | No Appeal |
|----------|------------------|------------------------|-------------------|------------------|--------|--------------|-----------------------|-----------------------|-----------|
| 08-08689 | 8/17/09 | Tuider | Y | | Y | | | | X |
| 08-08435 | 3/31/09 | Marshall | Y | | Y | | | Y | |
| 08-08419 | 8/21/09 | Ross | Y | | Y | | | | X |
| 08-08029 | 9/1/09 | Ross | Y | | Y | | | | X |
| 08-08012 | 8/31/09 | Harvey | | Y | Y | | Y | | |
| 08-08007 | 6/19/09 | Foreman | Y | | | Y | | | X |
| 08-07732 | 3/13/09 | Wesley | | Y | Y | | | | X |
| 08-06296 | 1/28/09 | Wesley | Y | | Y | | | | X |
| 08-06005 | 4/30/09 | Malone | Y | | Y | | | | X |
| 08-05216 | 4/8/09 | Hogan | | Y | Y | | Y | | |
| 08-01158 | 9/25/08 | Wesley | | Y | Y | | | | X |
| 08-00832 | 12/31/08 | Harvey | | Y | Y | | | | X |
| 07-16841 | 9/12/08 | Henry | Y | | Y | | | Y | |
| 07-16427 | 10/22/09 | Ross (case not found) | Y | | Y | | | Y | |
| 07-15321 | 8/26/08 | Ablard | | Y | Y | | | Y | |
| 07-15050 | 10/31/08 | Heiny | Y | | Y | | | | X |
| 07-14841 | 9/9/08 | Wesley | | Y | Y | | | | X |
| 07-11814 | 5/14/08 | Henry | Y | | Y | | | Y | |
| 07-10575 | 2/27/08 | Braeman | Y | | Y | | | Y | |
| 07-09304 | 6/19/08 | Dam | Y | | Y | | | Y | |
| 07-08049 | 4/10/08 | Henry | Y | | Y | | | Y | |
| 07-06484 | 12/31/07 | Lynch | | Y | Y | | | | X |
| 07-06482 | 2/12/08 | Howe | Y | | Y | | Y | | |
| 07-01979 | 12/20/07 | Heiny | Y | | Y | | Y | | |
| 07-01967 | 2/21/08 | Wesley | Y | | Y | | | | X |
| 07-01906 | 1/18/08 | Lokey-Anderson | Y | | | Y | | | X |
| 06-23369 | 2/21/08 | Ablard | Y | | Y | | | Y | |
| 06-23337 | 3/26/08 | Rivera | | Y | Y | | Y | | |
| 06-19856 | 5/31/07 | Williams | Y | | Y | | | Y | |
| 06-19154 | 11/30/07 | Lokey-Anderson | Y | | Y | | | Y | |
| 06-14616 | 4/11/07 | Henry | Y | | Y | | | Y | |

| Case No. | Date of Decision | Admin. Judge | Clearance Granted | Clearance Denied | Pro Se | With Counsel | Appealed and Affirmed | Appealed and Reversed | No Appeal |
|----------|------------------|--------------|-------------------|------------------|--------|--------------|-----------------------|-----------------------|-----------|
| 06-14521 | 3/30/07 | Leonard | Y | | Y | | Y | | |
| 06-12930 | 08/06/07 | Henry | Y | | Y | | Y | | |
| 05-02250 | 7/6/06 | Breslin | | Y | | Y | | | X |
| | | | | | | | | | |
| TOTAL | 62 | | 38 | 24 | 51 | 11 | 9 | 13 | 43 |

APPENDIX D

GUIDELINE F - ADMINISTRATIVE JUDGE DECISIONS

SORTED BY DATE

| Date of Decision | Case No. | Admin. Judge | Clearance Granted | Clearance Denied | Pro Se | With Counsel | Appealed and Affirmed | Appealed and Reversed | No Appeal |
|------------------|----------|------------------------|-------------------|------------------|--------|--------------|-----------------------|-----------------------|-----------|
| 4/16/10 | 09-05242 | Ricciardello | | Y | Y | | | | X |
| 4/14/10 | 09-02658 | Loughran | | Y | Y | | | | X |
| 4/13/10 | 09-04087 | Matchinski | | Y | Y | | | | X |
| 4/7/10 | 08-11614 | Loughran | | Y | Y | | | | X |
| 3/19/10 | 08-11786 | Henry | | Y | Y | | | | X |
| 3/18/10 | 09-00395 | O'Brien | | Y | | Y | | | X |
| 2/24/10 | 09-02753 | Curry | | Y | Y | | | | X |
| 2/23/10 | 08-10598 | Ricciardello | | Y | Y | | | | X |
| 1/29/10 | 09-03773 | Harvey | Y | | Y | | | | X |
| 1/25/10 | 09-03271 | Lokey-Anderson | Y | | Y | | | | X |
| 1/15/10 | 08-10013 | Ross | Y | | | Y | | | X |
| 1/15/10 | 09-01382 | Dam | | Y | Y | | | | X |
| 1/14/10 | 08-11533 | Anthony | Y | | Y | | | | X |
| 1/12/10 | 09-03724 | Ricciardello | | Y | Y | | | | X |
| 12/29/09 | 08-12181 | Anthony | Y | | | Y | | | X |
| 12/15/09 | 09-01741 | Anthony | Y | | Y | | | | X |
| 10/30/09 | 08-09622 | Mason | Y | | Y | | | | X |
| 10/22/09 | 07-16427 | Ross (case not found) | Y | | Y | | | Y | |
| 10/13/09 | 08-08980 | Anthony | | Y | Y | | | | X |
| 9/24/09 | 08-11162 | Mogul | Y | | | Y | | | X |
| 9/21/09 | 08-10577 | Leonard | Y | | | Y | | | X |
| 9/16/09 | 08-12184 | Henry | Y | | | Y | | Y | |
| 9/1/09 | 08-08029 | Ross | Y | | Y | | | | X |
| 8/31/09 | 08-08012 | Harvey | | Y | Y | | Y | | |
| 8/25/09 | 08-11779 | Heiny | Y | | | Y | | | X |
| 8/24/09 | 08-09899 | Ricciardello | | Y | Y | | Y | | |
| 8/21/09 | 08-08419 | Ross | Y | | Y | | | | X |
| 8/19/09 | 08-09182 | Hogan | Y | | | Y | | | X |

| Date of Decision | Case No. | Admin. Judge | Clearance Granted | Clearance Denied | Pro Se | With Counsel | Appealed and Affirmed | Appealed and Reversed | No Appeal |
|------------------|----------|----------------|-------------------|------------------|--------|--------------|-----------------------|-----------------------|-----------|
| 8/17/09 | 08-08689 | Tuider | Y | | Y | | | | X |
| 7/15/09 | 08-10264 | Wesley | | Y | Y | | | | X |
| 6/22/09 | 08-09808 | Wesley | | Y | Y | | Y | | |
| 6/19/09 | 08-08007 | Foreman | Y | | | Y | | | X |
| 5/27/09 | 08-10002 | Lokey-Anderson | Y | | Y | | | | X |
| 4/30/09 | 08-06005 | Malone | Y | | Y | | | | X |
| 4/8/09 | 08-05216 | Hogan | | Y | Y | | Y | | |
| 3/31/09 | 08-08435 | Marshall | Y | | Y | | | Y | |
| 3/13/09 | 08-07732 | Wesley | | Y | Y | | | | X |
| 2/26/09 | 08-09662 | Gales | Y | | Y | | | | X |
| 1/28/09 | 08-06296 | Wesley | Y | | Y | | | | X |
| 12/31/08 | 08-00832 | Harvey | | Y | Y | | | | X |
| 10/31/08 | 07-15050 | Heiny | Y | | Y | | | | X |
| 9/25/08 | 08-01158 | Wesley | | Y | Y | | | | X |
| 9/12/08 | 07-16841 | Henry | Y | | Y | | | Y | |
| 9/9/08 | 07-14841 | Wesley | | Y | Y | | | | X |
| 8/26/08 | 07-15321 | Ablard | | Y | Y | | | Y | |
| 6/19/08 | 07-09304 | Dam | Y | | Y | | | Y | |
| 5/14/08 | 07-11814 | Henry | Y | | Y | | | Y | |
| 4/10/08 | 07-08049 | Henry | Y | | Y | | | Y | |
| 3/26/08 | 06-23337 | Rivera | | Y | Y | | Y | | |
| 2/27/08 | 07-10575 | Braeman | Y | | Y | | | Y | |
| 2/21/08 | 06-23369 | Ablard | Y | | Y | | | Y | |
| 2/21/08 | 07-01967 | Wesley | Y | | Y | | | | X |
| 2/12/08 | 07-06482 | Howe | Y | | Y | | Y | | |
| 1/18/08 | 07-01906 | Lokey-Anderson | Y | | | Y | | | X |
| 12/31/07 | 07-06484 | Lynch | | Y | Y | | | | X |
| 12/20/07 | 07-01979 | Heiny | Y | | Y | | Y | | |
| 11/30/07 | 06-19154 | Lokey-Anderson | Y | | Y | | | Y | |
| 08/06/07 | 06-12930 | Henry | Y | | Y | | Y | | |
| 5/31/07 | 06-19856 | Williams | Y | | Y | | | Y | |

| Date of Decision | Case No. | Admin. Judge | Clearance Granted | Clearance Denied | Pro Se | With Counsel | Appealed and Affirmed | Appealed and Reversed | No Appeal |
|------------------|----------|--------------|-------------------|------------------|--------|--------------|-----------------------|-----------------------|-----------|
| 4/11/07 | 06-14616 | Henry | Y | | Y | | | Y | |
| 3/30/07 | 06-14521 | Leonard | Y | | Y | | Y | | |
| 7/6/06 | 05-02250 | Breslin | | Y | | Y | | | X |
| | | | | | | | | | |
| TOTAL | 62 | | 38 | 24 | 51 | 11 | 9 | 13 | 43 |