DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 14-03504
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

07/27/2015

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant and his spouse entered into a debt repayment plan to settle $69,935 in credit card debt, mostly in her name, through monthly payments of $1,041.72 starting in April 2011. They stopped payments after September 2012 because of the lack of progress by the debt-resolution law firm. Sixteen subsequent payments, of $290 each, toward $22,628 in charged-off debt on Applicant's credit record, are not sufficient to overcome the financial considerations concerns, given the inconsistency of those payments and persistent concerns about Applicant's inattention to his finances. Clearance is denied.

Statement of the Case

On December 8, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, Financial Considerations, and explaining why it was unable to find it clearly consistent with the national interest to grant or continue his security clearance eligibility. The DOD CAF took the action under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security*

Clearance Review Program (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

Applicant responded to the SOR allegations on December 16, 2014. He requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On April 21, 2015, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. I issued a Notice of Hearing scheduling the hearing for May 11, 2015.

I convened the hearing as scheduled. The Government submitted five exhibits (GEs 1-5) and Applicant submitted two exhibits (AEs A-B), which were admitted without any objections. Applicant testified, as reflected in a transcript (Tr.) received on May 20, 2015.

At Applicant's request, I held the record open for two weeks for him to submit additional documentary evidence. On May 21, 2015, Applicant submitted four exhibits. Department Counsel filed no objections by the June 12, 2015 deadline for comment. Applicant's submissions were marked and received as AEs C-F.

Findings of Fact

The SOR alleges under Guideline F that Applicant owed charged-off balances of $14,038 (SOR 1.a), $5,160 (SOR 1.b), and $3,430 (SOR 1.c) to a credit card company as of December 8, 2014. When he answered the SOR, Applicant admitted the debts but indicated that he was making payments. After considering the pleadings, exhibits, and transcript, I make the following findings of fact:

Applicant is a 66-year-old high school graduate, who has been working as a material tech aide for a defense contractor since February 2003. He served in a branch of the United States military from 1969 to 1973. (GEs 1, 3; Tr. 19.) He was employed in the automotive business before going to work in the defense industry. (Tr. 23.) He seeks to retain his secret-level security clearance, which he has held for most of his current employment. (GE 1.)

Applicant and his spouse have been married since 1970. They purchased their current residence around September 2002 for $180,000. (Tr. 24.) They refinanced their mortgage in March 2008, taking on a $380,000 conventional home loan, to be repaid at $3,132 per month. (GEs 2, 3.) They took on so much debt because the house needed a lot of work and they had bills. (Tr. 24.) Between February 2012 and March 2014, they fell behind several times in their mortgage payments. They were chronically late 60 days during the summer of 2013. (GEs 2, 5.) As of March 2015, their monthly mortgage payment of $3,160 was being paid on time. (GE 5.)

Applicant and his spouse have three adult daughters, ages 43, 41, and 31, for whom they have provided support over the years. Their youngest daughter married in September 2011, and Applicant and his spouse paid about $30,000 for the wedding. His

spouse borrowed $20,000 from her 401(k) to cover much of the expense. (GE 1; Tr. 20, 64-66.) She has been repaying the debt at $150 a week. (Tr. 66.) Applicant and his spouse are still paying their daughter's student loans, at $427 and $148 per month. Their daughter graduated from dental school, and she apparently intends to take over the payments in the near future on at least one of the loans.[1] (AE A; Tr. 45-46.) Applicant is listed as a co-maker on two student loans: a $17,500 loan opened in September 2004 with scheduled payments of $219 and an $18,000 loan opened in April 2010 with scheduled payments of $192, which he speculated could be for his oldest daughter, who completed nursing school in the last few years. (Tr. 68.) As of March 2015, the loans had respective balances of $17,077 and $17,014 and payments were being made on time. (GE 5.)

Applicant's and his spouse's middle daughter is employed at a pharmacy, and she has an 11-year-old daughter. She and her child have lived with Applicant for the past 18 months or so. (Tr. 20-21.) Applicant's oldest daughter lived in the home as recently as 2013. (GE 1; Tr. 22.)

Applicant's spouse has handled the household finances throughout their marriage. (Tr. 28.) By 2010, they were struggling to maintain their payments on several consumer credit accounts, including three accounts held by Applicant jointly (SOR 1.a) or individually (SOR 1.b and 1.c) with a credit card company. In October 2011, the accounts in SOR 1.a and 1.b were charged off for $16,358 and $5,160, respectively, due to nonpayment since September 2010. In November 2011, the account in SOR 1.c was charged off for $5,205 due to nonpayment since October 2010. (GEs 2, 3.) Applicant may not have known the details of the delinquencies, but he clearly knew they were behind in some credit card debts because of their youngest daughter's college costs.[2] (GE 4; Tr. 49-50, 53-54, 75.) He has left it up to his spouse to address their debts, despite knowing that she had a problem with paying a number of credit cards. He believes "she does well at it." (Tr. 54, 74.) He took no steps to reduce expenses so that they could make payments. (Tr. 27-28.)

With creditors pursuing them for collection, Applicant's spouse contacted a debt-resolution law firm for assistance resolving $69,935 in consumer credit debt. In return for a retainer fee of $900, and service fees of $10,490.26, the law firm agreed to contact their creditors, negotiate settlements, and then make payments to the creditors covered by the plan. Applicant and his spouse contracted to pay $1,041.72 monthly from April 25, 2011, to December 20, 2014.[3] Applicant's spouse authorized the payments by automatic debit from

[1] Applicant testified that he is paying one loan, which his daughter is going to take over once she becomes more established in her practice. (Tr. 47.) The scheduled payments total $411on the two loans co-signed by Applicant, which are on his credit record. (GE 5.)

[2] For example, Applicant testified that he believed the accounts in the SOR had been opened jointly by him and his spouse. (Tr. 28.) Credit reports show that only the account in SOR 1.a is a joint credit card account. The other accounts were in his name only. (GE 3.)

[3] Applicant and his spouse completed the paperwork in a local legal office. Applicant was aware that the law firm was to contact their creditors, negotiate and arrange repayment terms, and then make payments to their creditors. He estimated at his hearing that they paid between $800 and $1,000 a month to the law firm. (Tr. 34-35.)

their joint checking account. (AEs D, E; Tr. 31-35.) After his security clearance hearing, Applicant submitted records showing 16 months of payments, from apparently May 20, 2011, through September 20, 2012.[4] (AE E.) Applicant and his spouse stopped making the payments because the law firm was "collecting [their] money and not doing anything." (Tr. 39.) Available information does not show the amount of debt settled by the law firm on their behalf. Applicant testified that the firm satisfied only one debt of his spouse's and that "everything else had gone by the wayside." (Tr. 38-39.)

In April 2012, Applicant and his spouse took a 14-day cruise. (GEs 1, 3; Tr. 38.) They paid for the cruise, although Applicant does not now recall the cost. (Tr. 38.) When asked why they took a cruise when they owed delinquent debts, Applicant responded that they "needed a break." In 2014, they took a two-week cruise to Europe that cost them $4,000. (Tr. 50.) His spouse had set aside money for the vacation. (Tr. 73.)

On March 1, 2013, Applicant completed and certified to the accuracy of an Electronic Questionnaire for Investigations Processing (e-QIP). He responded negatively to all the financial record inquiries, including whether he was currently utilizing or seeking assistance from a credit counseling service or other similar resource to resolve financial difficulties; whether he had any bills turned over for collection in the last seven years; whether any account or credit card had been suspended, charged off, or cancelled for failing to pay as agreed in the last seven years; and whether he was currently over 120 days delinquent on any debt. (GE 1.)

An investigative check of Applicant's credit on March 8, 2013, revealed that a credit card account, on which Applicant was an authorized user, was in collection for $26,484, although that account was subsequently settled for less than its full balance. (GE 5.) Moreover, the creditor identified in the SOR had charged off three accounts for which Applicant was jointly (SOR 1.a) or individually (SOR 1.b and 1.c) liable. As of February 2013, their respective balances were $15,778, $5,160, and $4,915. (GE 3.)

On May 2, 2013, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). About his financial record, Applicant advised that he had no collection actions or financial delinquencies to report. Applicant was then confronted with the adverse credit information on his record. He indicated that the credit card account, on which he was an authorized user, was a joint account with his spouse. He did not dispute the amount owed. He denied knowing that it had gone to collection, but he was aware that his spouse was making payments on the debt. Applicant denied knowing that the accounts in the SOR were delinquent. He averred that his spouse handles all bills and that she was making payments on his debts according to terms agreed upon by the creditor. Applicant described his current financial situation as good, and he expressed

[4] Applicant presented only those bank statement entries that show the payment, and they show the month and date but not the year. (AE E.) The first page shows account activity from May 13 to May 23. Following the activity record for September 19 to September 26, Applicant included the first page from his bank statement covering the period October 1, 2011, to November 7, 2011. Subsequent entries are for successive months through September. It may reasonably be inferred that the bank entries in the record show the payments from May 2011 to September 2012. (AE E.)

intent to repay all debts. (GE 4.) At his hearing, Applicant again denied that he knew the debts were delinquent at the time of his interview, "Because [he] thought this company [name omitted] was taking care of it, which [his] wife had been working with, and [he] didn't really know it was a problem." (Tr. 74.)

In late May 2013, Applicant's spouse began $290 monthly payments to a law firm to resolve the debts owed the lender identified in SOR 1.a-1.c.[5] Available payment records show she made 16 payments by May 22, 2015, with another pending. No payments were recorded during the following months: July 2013, September 2013, December 2013, March 2014, April 2014, July 2014, September 2014, October 2014, February 2015, and April 2015. She made two payments in August 2013. (AEs B, F; Tr. 44.) Applicant was unaware until just recently that she had missed any payments. (Tr. 53.) The only explanation for any missed payments is that she was out of work from about September 2014 to February 2015 due to a fractured foot. (AE F.) She collected temporary disability income when she was out of work. (Tr. 48.)

Applicant's spouse works full time as a registered nurse. (Tr. 36, 44.) Applicant and his spouse's monthly household expenses total $4,951: $3,133 for the mortgage; $175 in wireless phone costs; $260 for electricity; $200 for insurance; $290 to the law firm to pay the delinquent debts in SOR 1.a-1.c; $143 in cable costs; $427 and $148 for his daughter's student loans; $75 on a wholesale club charge card; and $100 to a retail charge card. Their income totals $7,652.62, leaving them with an estimated $2,701 in discretionary funds. (AE A.) Applicant presented no evidence showing that any of that income is going toward debt remaining after they cancelled their first debt management plan. The daughter currently living with them does not contribute to any of the household bills, even though she receives child support for her daughter from her ex-husband. (Tr. 45.)

Applicant and his spouse received a federal income tax refund of $1,500 and a state income tax refund of $300 for tax year 2014. The funds went toward household expenses. (Tr. 51.)

Applicant does not have any active credit cards currently. (Tr. 55.) As of March 2015, the balance of the joint charged-off debt in SOR 1.a was $12,588 (SOR 1.a), which was down from $14,038 in March 2014. The balance of the debt in SOR 1.c was $3,140, which was down from $3,430 reported a year ago. There was no change to the $5,160 balance of the debt in SOR 1.b. (GEs 2, 5.)

Applicant presented a character reference from a longtime friend. He attests to Applicant's skill as a carpenter, plumber, and all-around handyman, and to Applicant's willingness to help others. (AE C.) No evidence was presented of any adverse incident involving Applicant on the job.

[5] Applicant testified that his spouse worked with an accountant on their finances for a period of time after they cancelled the debt repayment plan, but that the accountant gave up his practice to go into politics. It was at the referral of the accountant that his spouse began working with the law firm to which they are making the $290 payments. (Tr. 56-57.) Applicant presented no evidence of any payments made between late September 2012 and May 2013.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant's eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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 decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

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. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." *See also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern about financial considerations is articulated 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 F concerns are established. The evidence indicates a long history of financial overextension beyond the debts in the SOR. In 2008, Applicant and his spouse refinanced the mortgage on the home that they purchased in 2002, taking on $380,000 in debt for a home that originally cost $180,000. They took on the extra debt against their house to pay some bills and for home improvements. Yet, by 2010, they were struggling to pay their bills. A joint credit card account held by Applicant and his spouse and two other credit cards accounts held by Applicant individually became delinquent in the fall of 2010 and were charged off by a creditor for $26,723 (SOR 1.a-1.c) in 2011. In April 2011, Applicant and his spouse contracted with a debt-resolution law firm to resolve $69,935 in credit card debt. Applicant did not have any legal liability for repayment of the portion of the debt solely in his spouse's name, but the funds to address the debt through the debt resolution program came from their household income. It is also likely, although not conclusively established, that Applicant benefitted from some of the consumer credit extended to his spouse. Debts not alleged in the SOR cannot provide a basis for disqualification, but they are relevant to assessing the risk of recurrence of financial problems.[6] Three disqualifying conditions under AG ¶ 19 apply:

> (a) inability or unwillingness to satisfy debts;
>
> (c) a history of not meeting financial obligations; and
>
> (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.

Mitigating condition AG ¶ 20(a), "the behavior happened so long ago, was so infrequent, or occurred under circumstances that it is unlikely to recur and does not cast doubt on the individual's current, reliability, or good judgment," applies only in that the debts in the SOR became delinquent in 2010. AG ¶ 20(a) does not mitigate the concerns about Applicant's financial judgment in several aspects. Applicant and his spouse stopped their payments under the debt resolution plan after September 2012 because the law firm had resolved only one debt. Applicant continued to leave it to his spouse to address their

[6] The DOHA Appeal Board has long held that the administrative judge may consider non-alleged conduct to assess an applicant's credibility; to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; to decide whether a particular provision of the Adjudicative Guidelines is applicable; or to provide evidence for a whole person analysis under Section 6.3 of the Directive. *See*, *e.g.*, ISCR Case No. 09-07219 (App. Bd. Sep. 27, 2012). The unalleged delinquencies are relevant to assessing Applicant's financial judgment generally and the risk of recurrence of financial difficulties.

financial issues, including the debts in SOR 1.a-1.c, with no monitoring or oversight, despite knowing that his spouse had run up sizeable credit card debt that strained their household finances. As of May 2013, his spouse had arranged to pay $290 per month toward the debts in the SOR, but she has missed several payments since then, including some months when she was not out of work on temporary disability. Having taken a hands-off approach to his finances, Applicant bears the risk to his credit of late payments.

Applicant's inattention to his finances has also left him in a position of not being able to provide a plausible explanation to counter the reasonable inference of credit card mismanagement. While he testified that his youngest daughter's college costs strained the family's finances, Applicant provided no evidence of tuition payments or other related expenses that he and his spouse covered around 2010 that could explain why his spouse stopped paying on the debts in the SOR. To the extent that Applicant and his spouse took on living and education expenses for their daughters, the costs were voluntarily incurred and not the result of an unexpected circumstance that could implicate AG ¶ 20(b):

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

It is understandable that Applicant and his spouse would want to help their daughters. However, it is difficult to justify their ongoing payments of their youngest daughter's student loans, and their expenditure of $4,000 for a vacation in 2014, when Applicant still owes approximately $20,000 in delinquent debt that could cost him his security clearance and potentially his employment. AG ¶ 20(b) does not apply.

Applicant signed onto arrangements made by his spouse to address $69,935 in credit card debt, which may well have covered the three debts in the SOR, although available information does not show which debts were covered. Applicant presented evidence after his security clearance hearing showing that they made at least 16 payments of $1,041.72 by late September 2012. The debt-resolution firm resolved one of his spouse's credit card debts. In May 2013, Applicant and his spouse began making $290 payments that have been applied to lower the balance of the debt in SOR 1.a from $15,778 in February 2013 to $14,038 in March 2014, and to $12,588 as of March 2015. The debt in SOR 1.c went from $4,915 in February 2013 to $3,430 in March 2014 and to $3,140 in March 2015. As of March 2015, the creditor was reporting no progress on the debt in SOR 1.b. Two mitigating conditions under AG ¶ 20 are implicated, to a greater or lesser extent, by these efforts to address Applicant's debts:

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

Present payment arrangements notwithstanding, some concerns persist about Applicant's financial judgment and whether his financial issues are sufficiently resolved to where they present an acceptable security risk. A $26,484 collection debt, on which Applicant was an authorized user, was settled for less than its full balance. Even assuming that debt and the three debts in the SOR were included in the $69,935 covered by the 2011 debt resolution plan, there is no evidence of any plan in place by Applicant or his spouse to address some $17,598 in debt on which they are not making payments. Applicant is not legally liable for debt solely in his spouse's name. However, to the extent that it bears on the household finances, it raises questions about whether Applicant's financial problems are likely to persist, and whether he (or his spouse, since he is allowing her to continue to address their bills) can be counted on to comply with the payment arrangements in place for the delinquencies in SOR 1.a-1.c. In that regard, their compliance has already been inconsistent. Applicant offered his spouse's leave from work on temporary disability as a possible explanation. A handwritten entry on the record of payments indicates that she was out of work from approximately September 2014 to February 2015. Assuming those dates are reasonably accurate, it would not explain why no payments were made in July 2013, December 2013, March 2014, April 2014, or July 2014.

Nothing in the Directive requires that Applicant be free of delinquent debt for him to be granted security clearance eligibility, but his burden of overcoming the financial considerations security concerns is not met by his ongoing inattention to his personal finances. He seemed not to know when his spouse began working with the firm making payments on his debts. (Tr. 42.) He testified that he became aware of her missed payments to the law firm only "just recently." He could not explain why she had missed some payments (Tr. 53) when their income is more than sufficient to cover them. About the student loans on his credit record, he could not clarify whether they were for his oldest daughter or for his youngest daughter. (Tr.46.) More than $20,000 of his delinquent debt is still outstanding, despite net household monthly discretionary income reported to be $2,701. The financial considerations concerns are not mitigated.

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 his conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

> (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

The financial analysis under Guideline F is incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant denied any financial delinquencies when he completed his e-QIP in March 2013, and he denied any financial issues when he was interviewed by the OPM investigator in early May 2013. His explanation is that he did not know that he had delinquent debts on his credit record because the debt-resolution law firm was taking care of them. However, the circumstances suggest that Applicant acted to conceal his delinquencies. Applicant admitted at his hearing that collection calls led his spouse to seek out the debt-resolution firm. Applicant signed onto the debt-repayment plan in April 2011. Even assuming that Applicant held a good-faith belief that he did not have to disclose the debts covered by the plan, he was placed on notice that the debts were of concern to the DOD during his May 2013 interview. He has done little since then to ensure that his spouse makes timely payments to address them.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990.). For the reasons noted above, based on the facts before me and the adjudicative guidelines that I am required to consider, I am unable to conclude that it is clearly consistent with the national interest to grant or continue security clearance eligibility for Applicant at this time.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Elizabeth M. Matchinski
Administrative Judge