



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



In the matter of:)
)
) ISCR Case No. 14-05359
)
Applicant for Security Clearance)

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: Thomas Albin, Esq. and Aida Carini, Esq.

02/24/2016

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Factors outside of Applicant's control have negatively impacted his household income over the years, but Applicant also made some questionable financial judgments. In October 2015, he resolved a \$95,982 federal tax lien from 2012 through an Offer in Compromise. Yet, he and his spouse are still behind in paying their mortgage despite a loan modification. Applicant's wages are being garnished to repay a \$24,000 credit card debt. While he has been making payments for the past six months to resolve another \$35,912 in collection debt, financial considerations concerns persist. Clearance is denied.

Statement of the Case

On March 18, 2015, 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 answered the SOR allegations through his counsel on March 31, 2015, and he requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On July 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. On July 23, 2015, I scheduled the hearing for August 18, 2015.

At the hearing, seven Government exhibits (GEs 1-7) were admitted into evidence without objection. A chart prepared by Department Counsel as a supplement to his closing argument was marked as a hearing exhibit (HE 1) for the record, but it was not admitted as an evidentiary exhibit. Applicant submitted nine exhibits (AEs A-I), which were admitted without objection.¹ Applicant and five witnesses testified for him, as reflected in a transcript (Tr.) received on August 26, 2015.

The record was held open for two weeks after the hearing for Applicant to submit additional documents and to provide copies of AEs H2, I, and J to Department Counsel. Applicant provided no new documents by the deadline. Counsel for Applicant returned AEs H2, J, and K for the record on January 20, 2016. Additionally, Applicant requested through counsel that I reopen the record to consider an additional exhibit just received that was not available at his hearing. The document was marked as AE K. Department Counsel filed no objection by the January 27, 2016 deadline for comment, and the document was admitted into evidence.

On January 28, 2016, counsel for Applicant requested leave to submit additional exhibits reflecting payments on the debts in the SOR. Department Counsel indicated on February 17, 2016, that the Government had no objection to proposed exhibits AEs L-R, so the documents were accepted into the record as exhibits.

Findings of Fact

The SOR alleges that as of March 18, 2015, Applicant was \$3,466 past-due on his mortgage loan (SOR ¶ 1.a) and that he owed \$95,982 in federal income tax debt on a 2012 tax lien, collection debt totaling \$54,704 (SOR ¶¶ 1.b, 1.c, 1.e, 1.f), and a \$5,782 charged-off debt (SOR ¶ 1.g). Applicant admitted the alleged debts with the exception of a \$1,087 debt reportedly owed a sporting goods retailer (SOR ¶ 1.e), which he indicated was his son's debt. Applicant's admission to the remaining debts are accepted and incorporated as findings of fact. After considering the pleadings, exhibits, and transcript, I make the following additional findings of fact.

Applicant is a 59-year-old high school graduate with some community college studies. He started a career in law enforcement in April 1978. Around June 2004, he retired from his full-time position, although he worked part time for the same police department for

¹ AE H was offered and admitted as AE H1 and AE H2.

the next few years. He began working for his defense contractor employer in its security department in July 2007. (GEs 1, 2; Tr. 59-61.)

Applicant and his spouse married as teenagers in July 1976. They have two sons, now ages 37 and 26, and a daughter age 29. They have four grandchildren. (GE 1; Tr. 70-72, 154.) They have helped out family members over the years, even when it strained their own finances. (Tr. 113, 169.) When their youngest son was a high school senior, they provided a home for his son's friend whose parents were undergoing a divorce. (Tr. 76-77.) Applicant and his spouse has been the primary support for his mother, although their responsibilities are not largely financial. Applicant has lost time from work in the last two years because of his mother's repeated hospitalizations and rehabilitations. (Tr. 83, 168.) When Applicant's sister-in-law, who is a single mom, lacked medical insurance, Applicant gave her the \$200 up-front fee to see a specialist. (Tr. 113.) Applicant and his spouse also purchased clothing and presents for her children over the years. Over the last two years, they have provided food for his sister-in-law, who was unemployed as of August 2015 following an accident. (Tr. 116.) Applicant and his spouse aided another sister when her husband was unemployed and dealing with a serious medical condition. (Tr. 114.) Applicant also helped his brother's family by taking in his two boys on occasion. (Tr. 115, 168-169.) On occasion, Applicant and his spouse have helped her parents with their mortgage payments. (Tr. 168.)

Applicant and his spouse had their home built at a cost of "maybe \$45,000." They have lived there since August 1982. (GE 1; Tr. 70-72, 124-125, 167.) In June 2003, Applicant and his spouse opened a \$141,241 home equity loan, to be repaid at \$1,134 per month for 20 years. (GE 6.)

Applicant retired from his civilian law enforcement position around July 2004 with the intent of finding another full-time job. In lieu of a pension benefit, he elected to take a \$400,000 lump-sum payout, which he placed in a retirement account. He was also paid between \$50,000 and \$60,000 for unused sick time, which he put toward household expenses. (Tr. 126-127.) Over the next three years, Applicant searched for full-time employment without success. He earned upwards of \$1,000 a month from his part-time work, and his spouse brought in \$300 to \$400 a month in income from her part-time job. (GE 6; Tr. 84-85.) Applicant and his spouse began to fall behind on some consumer credit obligations. (GEs 5, 6.) They used the equity in their home to cover expenses. In July 2005, Applicant opened a \$60,000 home equity loan in his name, to be repaid at \$506 per month for 15 years. Applicant and his spouse paid off 2003 and 2005 home equity loans in October 2007 by taking on a joint mortgage for \$282,400, to be repaid at \$2,295 per month. (GE 7; Tr. 125.)

From 2005 to 2007, Applicant also made withdrawals from his retirement account, at a ten percent penalty per transaction, to cover household expenses and other bills, including assisting his daughter with her college expenses, paying medical costs not covered by insurance, and buying a \$2,000 to \$3,000 shed. (GE 6; Tr. 130.) Applicant also bought a car for his spouse.² With taxes and penalties for early withdrawal, he received

² Available credit reports show that Applicant opened an automobile loan for \$14,596 in August 2005. The

about half of his original \$400,000. He had taxes withheld from his part-time pay in 2005, but he then underpaid his federal taxes by approximately \$20,000 for that year because his retirement account withdrawals were taxed as income. Applicant continued to make early withdrawals from his retirement account in 2006 and 2007 because he could not afford to meet his household expenses otherwise. He was paying \$1,500 monthly in medical insurance premiums for himself and his family. (Tr. 128-129.) Applicant and his spouse exacerbated their tax issues by having no additional income withheld for taxes in 2006 and 2007, and by not filing timely returns for at least 2005 and 2006.³ While they filed their delinquent returns in 2008, they did not pay the taxes owed. (GE 6; Tr. 142.) According to Applicant, he had untreated post-traumatic stress and was not thinking properly. (Tr. 84, 129.)

In July 2007, Applicant began working full time for his current employer at annual wages of \$40,000. On July 17, 2007, Applicant completed and certified to the accuracy of an Electronic Questionnaire for Investigations Processing (e-QIP). Applicant disclosed no issues of potential security concern on his e-QIP (GE 2), and he was granted a top secret security clearance around October 2008. Around January 2009, Applicant was granted access to sensitive compartmented information. (GE 1.)

In February 2008, Applicant's annual income increased to \$45,000. Applicant's financial problems persisted despite the fact that his wages continued to increase by an average of \$2,500 annually. (GE 6.) In 2012, Applicant and his spouse's mortgage lender initiated foreclosure proceedings after they missed or made only partial payments for three consecutive months. (GE 6.) Around July 2013, Applicant and his spouse obtained a modification of their mortgage, which they had opened in October 2007. They reduced their monthly payment to \$1,733, but at the end of their 40 year loan, they will have a balloon payment due of \$20,313. (GE 7.)

In March 2012, Applicant's spouse began her present job, working less than 30 hours per week at \$10 an hour. (Tr. 164.) Her take-home pay averaged \$800 to \$1,100 per month. As of July 2013, Applicant was earning \$60,000 annually as he had progressed through the ranks at work. He contacted his creditors about repayment, but they often wanted lump sums that he could not afford. Sometime in 2013, Applicant and his spouse received \$68,000 in an insurance settlement from an accident in March 2010. Approximately \$25,000 of the settlement went to pay medical bills incurred by Applicant and his spouse. (Tr. 131-132.) Applicant set aside \$10,000 for his delinquent federal taxes,⁴ although he no longer had any of those funds as of August 2015. (Tr. 129.) The

account was late from 30 to 120 days at times before it was paid off. (GEs 3-5, 7.)

³ During his interview in March 2014, Applicant explained that he stopped withholding additional money for taxes in 2006 and 2007 because he needed the money to pay household bills. He admitted that he had not filed returns or paid taxes to the IRS in 2005, 2006, and 2007, and that when he filed his returns in 2008, he did not pay the taxes owed. (GE 6.) Applicant apparently did not file timely tax returns for three years. His income tax return for tax year 2007 would have been due in 2008, when he asserts that his late returns were filed, although it is unclear whether he filed that return by its due date.

⁴ Applicant told the OPM investigator in March 2014 that he had set aside \$10,000 for his income tax

rest of the settlement money went to pay bills, to offset the garnishment of his wages, to cover truck repairs of \$2,000, and to replace the car that had been damaged in the accident. (GE 6; Tr. 132-133.) They paid cash for a 2005 model-year vehicle. (Tr. 134.)

On November 25, 2013, Applicant completed an e-QIP to renew his security clearance eligibility. In response to a financial record inquiry concerning whether he had failed to file or pay federal, state, or other taxes when required by law or ordinance in the last seven years, Applicant indicated that he owed federal taxes of \$20,000 for 2005, \$30,000 for 2006, and \$35,000 for 2007. He also listed some delinquent consumer credit debts. In response to the financial record inquiries, Applicant listed several consumer credit delinquencies. (GE 1.) During his subject interview of March 10, 2014, Applicant explained that he fell behind on various credit accounts used for living expenses and that he occasionally missed a payment when he focused on other bills. Consequently, his creditors increased the interest rates on unpaid balances. He eventually stopped paying on some accounts. (GE 6.)

Available credit reports (GEs 3-5, 7) and admissions by Applicant during his March 10, 2014 interview (GE 6), at his August 2015 security clearance hearing, and in a January 2016 affidavit (AE Q), establish several delinquencies, as follows:

Mortgage delinquency (SOR ¶ 1.a)

As of December 25, 2013, Applicant and his spouse were making timely payments on their home loan after modification. (GE 5.) As of August 2014, Applicant and his spouse were \$3,443 past due on their mortgage (SOR ¶ 1.a). (GE 4.) They were consistently 30 days behind in their mortgage payments from November 2014 through July 2015. (GE 7; Tr. 135-136.) Additionally, as of August 2015, they owed unpaid late charges of \$254.72. (AE A.) There is no evidence that they paid the \$3,760 due on their account by August 1, 2015. As of August 7, 2015, their account was \$3,466 past due (SOR ¶ 1.a). (GE 7.) Applicant testified that their next mortgage payment was to be automatically withdrawn from their checking account on August 22, 2015, at which point they would be 22 days behind. (Tr. 48.) Applicant attributes the late payment of his mortgage to when he gets paid. He expects that his pay day will coincide with the due date on their mortgage in April 2016, so they will be caught up at that point. (Tr. 49-50.) As of late January 2016, Applicant was 1.5 months behind in paying the mortgage. (AE Q.)

Loan in collection for \$30,130 (SOR ¶ 1.b)

Applicant took out a loan in February 2008 for repairs on his home, for living expenses, and for his daughter's wedding. His account was referred for collection after no payments since November 9, 2009. When the current creditor purchased the debt in July 2011, the balance was \$29,504.50, of which \$28,338.81 was unpaid principal. (GEs 5, 6;

delinquency. (GE 6.) When asked on cross-examination whether any of his insurance settlement from the March 2010 accident went toward paying his delinquent taxes, Applicant responded that they paid \$2,000. They set aside money to pay their taxes but the IRS did not accept their Offer in Compromise. (Tr. 134.)

AEs I, J.) Around early November 2011, Applicant entered into an arrangement to repay the then \$30,063.51 balance at \$150 per month from November 18, 2011, through October 18, 2013. Interest continued to accrue on the debt. (AE J.) Applicant asserts that he made the payments as required through October 2013. After he noticed in early 2014 that the payments were not being debited from his bank account, he was reminded that the payment plan was only for two years. (GE 6; Tr. 53-54.) During a March 10, 2014 interview with an authorized investigator with the Office of Personnel Management (OPM), Applicant expressed his intent to resume a payment plan in March 2014. (GE 6.) Because his wages were being garnished to collect another delinquent debt, *infra*, Applicant did not have the funds to resume payments. (Tr. 54.) As of September 2014, Equifax was reporting a past-due balance of \$30,130 on the debt. (GE 4.) On August 17, 2015, the creditor agreed to an initial repayment arrangement, with \$150 due by August 31, 2015, \$676 due by September 10, 2015, and then \$150 due by the 5th of each month from October 2015 to February 2016. Applicant was advised that the payment plan could be voided for missing any payments. (AE I.) Applicant arranged for automatic payments of \$150 a month from his checking account. (Tr. 55.) Applicant presented proof of a \$300 payment on January 26, 2016 (AE R), although he indicates that he continues to make payments on schedule. In January 2016, he renewed the repayment arrangement at \$150 a month for another six months. (AE Q.)

Credit card debt in collection for \$23,207 (SOR ¶ 1.c)

Applicant opened the credit card account in August 2001. After no activity since December 2008, the account was placed for collection around August 2011 for \$19,700. (GE 5.) Applicant defaulted on a \$20,900 judgment entered in 2012. (GE 6.) Around November 2013, Applicant agreed to repay the debt at \$450 per month. (GE 1.) As of December 2013, Applicant owed a past-due balance of \$24,869. (GE 5.) Applicant made only a few payments. (Tr. 78.) Equifax reported a past-due balance of \$23,537 in September 2014. (GE 4.) His wages were being garnished through October 2014 to recover another credit card judgment of almost \$20,000 (not alleged), *infra*. When that garnishment ended, Applicant did not resume any payments on this judgment because of a loss of spousal income due to her medical issues. (Tr. 141.)

Around April 2015, Applicant contacted the lender about resuming monthly payments at \$450. He learned that the creditor had filed to garnish his wages to repay a past-due balance around \$24,000. His wages were garnished for \$765 and \$710 in May 2015. (AE L.) As of June 2015, the reported debt balance was \$23,103. (GE 7.) His wages continue to be subject to garnishment, usually at \$640 every two weeks (AE B), but sometimes more. Applicant reports garnishments of \$710 on September 18, 2015, \$806 on October 30, 2015, and around \$670 in January 2016. More is now being garnished from his wages because of his pay increase. (AE Q.) As of January 22, 2016, the balance of the debt was approximately \$11,338. (AEs E, L; Tr. 79, 140-141.) Applicant expects the debt to be paid off in mid-September 2016. (AE L; Tr. 80.)

Federal tax lien for \$95,982 (SOR ¶ 1.d)

On his November 2013 e-QIP, Applicant listed federal tax debt totaling \$85,000 for tax years 2005 through 2007. He indicated that he had made partial payments in that his tax refunds had been intercepted and applied to his tax debt. He had an attorney working with the Internal Revenue Service (IRS) to satisfy back taxes. (GE 1.) A check of Applicant's credit on December 25, 2013, revealed that the IRS had filed a federal tax lien of \$95,892 in January 2012. When he was interviewed by the OPM investigator in March 2014, Applicant attributed his tax debts to his retirement fund withdrawals. He admitted that he received requests for full payment from the IRS twice yearly. He ignored the notices because he could not afford the lump-sum payment. After his spouse began working full time in March 2013, he retained a lawyer toward submitting an Offer in Compromise. Applicant expressed his intent to offer the IRS \$10,000 to settle his debt with a payment of \$2,000 to show his good-faith. Should the IRS accept his offer, he planned to then pay the remaining \$8,000 to resolve his tax delinquencies. If the IRS rejected his Offer in Compromise, he would negotiate a payment plan. (GE 6.)

Applicant testified at his hearing that all of their tax refunds, federal and state, have been intercepted and applied to their tax delinquency. (Tr. 142-143.) He did not provide any documentation showing an updated tax balance. As of September 2014, the federal tax lien from 2012 was still on his credit record for \$95,892. (GE 4.) On adjusted gross income of \$100,108 in 2014, Applicant and his spouse underpaid their federal income taxes by \$435 for that tax year. They had to pay taxes on \$4,066 in gambling income. His spouse won two casino jackpots. (AE C; Tr. 145.) She went to the casino with her sisters, "just to get out of the house." She estimates that she "broke even." Applicant's spouse started with about \$50 each time she gambled. (Tr. 170-172.)

As of August 2015, there had been no progress toward resolving their federal tax lien. (GE 7.) The IRS had rejected their Offer in Compromise for \$10,000, and they were appealing that decision. (AE G; Tr. 86.) The IRS considered his income as sufficient to pay the debt within 70 months. (Tr. 86.) As of August 2015, Applicant and his spouse had submitted \$2,000 with their settlement offer. (Tr. 134-135.) They had paid their attorney \$3,000 to negotiate with the IRS. (Tr. 144.)

On October 29, 2015, the IRS notified Applicant and his spouse that they had "met the payment provisions for [their] Offer in Compromise contract" for the tax periods specified in their offer. The IRS notice did not specify the tax years covered by the offer, but those tax periods are likely those covered by the 2012 tax lien, given that the IRS indicated their lien would be released within 30 days. (AE K.) Under the Offer in Compromise contract, Applicant and his spouse are required to file and pay their taxes timely for five years. Any failure to comply will result in termination of the Offer in Compromise and reinstatement of the original tax liability minus any payments. (AE K.) Applicant intends to file and pay his income taxes as required by law. Timely payment and tax filing has not been an issue since tax year 2007. (AE Q.)

Sporting goods collection debt of \$1,087 (SOR ¶ 1.e)

As of December 25, 2013, a \$1,087 collection balance from October 2008 was being reported on Applicant's credit record. (GE 5.) Applicant informed the OPM investigator in March 2014 that it was his son's debt. (GE 6.) Applicant's son testified that he ordered items for a baseball team. He offered to pay the bill on a promise that the merchandise would be forthcoming. The merchant indicated that the items had been sold. Applicant's son advised the merchant that he was not going to pay for merchandise he did not receive. (Tr. 96-98.) Applicant has asked his son to resolve the issue. As of August 2015, his son had not done so. (Tr. 99.)

Emergency physician debt in collection for \$280 (SOR ¶ 1.f)

As of December 25, 2013, Applicant had not paid a \$280 collection debt from March 2010. (GE 5.) He did not recognize the debt when he was interviewed by the OPM investigator in March 2014. After his interview, he inquired about the debt and learned that it was a medical debt. (GE 6.) Applicant assumed that the debt was paid from their insurance claim for the accident in March 2010. (Tr. 88.) As of August 2015, Equifax was reporting that the debt had been placed for collection in April 2015. (GE 7.) Around August 13, 2015, Applicant made arrangements to pay the debt by automatic debit from his checking account on August 15, 2015. The \$280 was debited from his draft account on August 19, 2015, which left a balance of \$2.65 in his account. (AE M; Tr. 147.)

Credit card debt charged off for \$5,782 (SOR ¶ 1.g)

Applicant disclosed on his November 213 e-QIP that he owed a credit card debt of \$5,800 in collection. (GE 1.) Credit checks reveal that a \$5,782 balance was charged off and sold around December 2009. (GE 5.) On January 6, 2014, a collection agency offered a settlement with three options: a lump-sum payment of \$1,445, six payments of \$290, or 12 payments of \$193. Applicant told the OPM investigator in March 2014 that he intended to pay the \$1,445 within the next 30 days. (GE 6.) Applicant did not pay the debt. On August 4, 2015, the creditor offered to settle Applicant's \$5,782 delinquent balance for a lump-sum payment of \$1,445 due August 31, 2015, or for \$2,023.92 payable in 12 consecutive monthly payments of \$168.66. Applicant arranged for the monthly payments to be withdrawn from his checking account from August 2015 through July 2016. (AE H; Tr. 91-92, 148.) Applicant made the monthly payments to reduce the balance to \$5,107.77 as of December 23, 2015. (AE N.) With the increase in the wage garnishment to \$670 bi-weekly for the debt in SOR ¶ 1.c, Applicant negotiated a lower payment of \$149 per month from \$168.66 on the debt in SOR ¶ 1.q. (AE Q.) Applicant indicated on January 27, 2016, that under the present repayment agreement, any balance remaining on the debt will be erased provided he makes the agreed payments through December 2016. (AE Q.)

Credit card judgment for \$20,000 (not alleged)

Around August 2009, Applicant stopped paying on a consumer credit card account opened in August 2003. The account was charged off for \$19,047. (GEs 3, 5.) On his

November 2013 e-QIP, Applicant indicated that his wages had been garnished at \$500 to \$600 every two weeks since approximately February 2013 to pay off a \$20,000 financial judgment entered against him in 2012. (GE 1.) He did not make voluntary payments toward the judgment because he was focused on paying other bills. As of December 2013, he had paid down the debt to \$12,517. (GE 5.) In March 2014, he indicated to the OPM investigator that the garnishment would be ending in June 2014. (GE 6.) As of September 2014, he owed \$2,271 on the account. (GE 4.) His wages continued to be garnished through October 2014. As of November 2014, the debt was satisfied. (GE 3; Tr. 141.)

Applicant's spouse has had several medical issues over the years that made it difficult for her to maintain a full-time job. In late 2014, Applicant's spouse underwent surgery for a serious medical condition diagnosed in October 2014. Following post-surgical treatment completed in March 2015, she was given a good prognosis. (AE D; Tr. 72-73.) She lost time at work during her treatment and recuperation, but she was working 30 to 35 hours a week as of late July 2015 at \$12 an hour. (AE F; Tr. 74, 156, 161-164.) She has continued to maintain her work hours as of January 2016. (AE Q.) For the past six or seven years, Applicant's spouse has earned extra income cleaning homes on and off. (Tr. 156-159.) She incurred some medical costs not covered by insurance, on which she arranged to make monthly payments. (Tr. 75-76.) Applicant's spouse averred that her medical costs have caused them ongoing financial problems (Tr. 165), but the specific medical costs were not detailed in the evidentiary record.

As of late December 2014, Applicant's take-home pay was \$1,657.52 every two weeks. He was repaying two 401(k) loans at \$121.25 and \$146.41 every paycheck, but his wages were not subject to garnishment at that time. (AE O.)

Applicant applied for a promotion in his department in 2015. The then longtime director of security at the facility considered Applicant to be "indisputably the right person for the position." Yet, before the company could formally extend the offer, Applicant withdrew his name from consideration because of the SOR and uncertainty about his security clearance. The director of security, who is now retired, convinced Applicant that it was in the best interest of the organization for him to accept the position. Around April 2015, Applicant was promoted and given a \$27,000 increase in salary. He was no longer eligible for overtime pay, so his actual earnings increased by about \$13,000 a year. (Tr. 32-39, 63-69, 80-81.) Because he had been in his new position only since April 2015, he earned \$8,896 more in 2015 than in 2014, from \$79,893 in 2014 to \$88,789 in 2015. (AEs O, P.) As of December 26, 2015, non-tax deductions from his bi-weekly pay included a \$643.28 wage garnishment for the debt in SOR ¶ 1.c and the payments for his two 401(k) loans. (AE P.)

Applicant borrowed from his 401(k) in 2013 and in July 2014 to pay household bills. (AE B; Tr. 118, 137.) The 2014 loan was for almost \$18,000 in anticipation that the IRS would accept the Offer in Compromise. (Tr. 137.) A portion of that loan went to the attorney retained to revolve his tax issues. Most of the loan went toward living expenses. (Tr. 138.) Applicant had about \$53,000 in his 401(k) account at work as of August 2015. His outstanding loan balance was \$21,094 as of June 30, 2015. (AE B.) He expressed a plan

to take out a hardship loan from his 401(k) for his federal taxes if he has some resolution with the IRS. (Tr. 119.) Applicant testified that he has no other funds available to pay the IRS. (Tr. 120.) The money he had set aside from the insurance settlement to resolve the income taxes “just started dwindling because of bills coming up.” (Tr. 134.) Provided he retains his employment, he expects that he can resolve his delinquencies in the next two years. (Tr. 120.) With his wage garnishment for the debt in SOR ¶ 1.c and his promised payments of \$150 per month toward the debt in SOR ¶ 1.b and \$168 per month toward the debt in SOR ¶ 1.g, Applicant estimated that he and his spouse have \$100 in net discretionary income each month. (Tr. 148-149.) Applicant and his spouse have no significant savings apart from his 401(k). (Tr. 147.)

Work references

The former director of security and the acting director of security for Applicant’s employer both testified for Applicant. The former director of security indicates that he was “intimately aware” of the issues that led Applicant to withdraw his candidacy for the management position when he convinced him to accept the job. Applicant had demonstrated compliance with security requirements. He also had “tremendous capability with the force,” having progressed through the ranks. Applicant proved to be a strong advocate and a strong presence within his organization such that he managed to bring about a “sea change” in the organization in the few months since he assumed his leadership position. (Tr. 36-38.)

The current acting director of security has known Applicant since 1980. They previously worked together before he left to work for Applicant’s current employer in 1986. He supervised Applicant from the time of Applicant’s hire with the defense contractor until Applicant assumed his present position around April 2015. Applicant was always trustworthy, professional, and required minimal supervision. (Tr. 102-103.) He recently became aware that Applicant was issued an SOR regarding concerns about outstanding debt. Applicant informed him that he owes a large sum to the IRS and about his efforts to resolve his debts. He was also made aware of “some other sundry debts associated with medical bills and that with his wife.” He does not believe that Applicant is a security risk. (Tr. 105-107.) Applicant’s work performance has been “outstanding.” He has no record of reprimands or security violations with the company. (Tr. 108.)

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 by Applicant's federal tax lien of \$95,982, his late mortgage payments, the consumer credit delinquencies set forth in SOR ¶¶ 1.b, 1.c, and 1.g, and the \$280 collection debt in SOR ¶ 1.f. Disqualifying conditions AG ¶

19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply. The facts would also implicate AG ¶ 19(g), “failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same,” in that Applicant did not file his federal income tax returns for tax years 2005 and 2006 until 2008. However, the Government did not cite late filing as a security issue, presumably because of Applicant’s rectification. Similarly, Applicant’s consumer credit delinquency included an unalleged \$19,047 charged-off credit card balance that went to judgment around 2012 and was satisfied by wage garnishment. Neither the untimely tax filings nor the financial judgment can serve as a basis for disqualification because they were not alleged. However, they remain relevant to assessing Applicant’s financial judgment generally and to evaluate his evidence in reform.⁵ The garnishment of his wages at \$500 to \$600 every two weeks from February 2013 through October 2014 for the unalleged debt compromised his finances and led him to borrow approximately \$20,000 from his 401(k) to pay his household bills.

As of December 2013, a \$1,087 collection balance from October 2008 was being reported on Applicant’s record (SOR ¶ 1.e). That debt had been incurred by his son and so should not have been reported on Applicant’s credit record. Applicant’s son had ordered and was charged for sporting goods equipment that he did not receive. Applicant’s liability for the debt was not established. AG ¶ 20(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,” applies to that debt.

Security concerns raised by financial delinquency may be mitigated when the debts were incurred sufficiently long ago, were infrequent, or were incurred under circumstances that do not cast doubt about a person’s current judgment, reliability, or trustworthiness. See AG ¶ 20(a), “the conditions happened so long ago, were 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.” Applicant and his spouse incurred the tax debts more than five years ago. While Applicant testified that some of their tax refunds had been intercepted, according to the IRS, Applicant and his spouse had a tax liability of \$95,982 as of January 2012. As of August 2015, that debt had not been resolved. AG ¶ 20(a) cannot reasonably apply to the federal tax debt.

Applicant’s consumer credit delinquencies in SOR ¶¶ 1.b, 1.c, and 1.g were charged off and sold or placed in collection. Even with the garnishment of his wages since April 2015 to collect the judgment awarded the creditor in SOR ¶ 1.c, Applicant owed approximately \$19,000 on that debt, \$30,130 on the debt in SOR ¶ 1.b, and \$5,782 on the

⁵The 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. 03-20327 (App. Bd. Oct. 26, 2006); ISCR Case No. 09-07219 (App. Bd. Sep. 27, 2012).

debt in SOR ¶ 1.g as of August 2015. He was behind on their mortgage (SOR ¶ 1.a). AG ¶ 20(a) also does not mitigate his consumer credit delinquencies.

Applicant has a case for partial application of AG ¶ 20(b). Household income suffered at times when his spouse was either unemployed or worked only limited hours because of her various medical issues. Applicant worked part-time for three years after he retired from his position at the local police department. He paid about \$1,500 per month in medical insurance costs for his family. Most recently, Applicant's spouse lost time at work between October 2014 and March 2015 for medically necessary diagnostics, treatment, and recuperation for a serious medical condition. Applicant and his spouse incurred medical costs not covered by insurance for her care, although those expenses were not detailed in the record. Applicant lost time at work as well over the past few years to care for his mother during her repeated hospitalizations. The financial impact of medical issues is a mitigating factor under 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.

Yet, Applicant also made questionable financial decisions that caused or contributed substantially to his financial struggles. When he retired around July 2004, he chose to take a lump-sum payout of \$400,000 rather than a pension, which he initially deposited into a qualified retirement account. While he may have not foreseen the difficulty he would have in securing another full-time job when he retired, he made the early retirement withdrawals that were taxed as income. He and his spouse exacerbated their tax problems by ignoring IRS notices received twice annually about their tax debts. It was only after the IRS placed a \$95,982 tax lien in 2012 that Applicant and his spouse retained legal counsel to negotiate with the IRS toward an Offer in Compromise, and that offer was late in coming. Applicant borrowed heavily against the equity in his home to pay expenses. Additionally, in February 2008, Applicant took out the loan in SOR ¶ 1.b for home repairs, living expenses, and for his daughter's wedding. When he stopped paying on the loan in November 2009, he owed a principal balance of almost \$28,339, when his annual income was only \$45,000. Applicant and his spouse provided financial assistance on occasion to family members, at cost to their own credit. Applicant may have had some medical co-pays from the car accident in March 2010, but those costs, if any, are not detailed in the record.

In 2013, Applicant and his spouse received a substantial insurance settlement of \$68,000 from a March 2010 accident. Only about \$25,000 of that settlement went toward medical debt. Applicant indicated in March 2010 that he set aside \$10,000 for their federal tax debt. He admitted at his hearing that only about \$2,000 actually went toward their tax issues. A large proportion of the insurance settlement, and two 401(k) loans totaling approximately \$20,000, went to pay household bills because his wages were being garnished at \$1,000 to \$1,200 a month to repay a credit card judgment of approximately \$20,000 that was not alleged in the SOR. An involuntary wage garnishment to repay a legitimate debt is not a circumstance that falls within AG ¶ 20(b).

AG ¶ 20(b) requires that a debtor act responsibly toward his creditors once the issue or crisis that led to the financial problems has passed. Applicant promised the creditor in SOR ¶ 1.c in November 2013 that he would make \$450 monthly payments. He made few payments on that debt. In March 2014, Applicant indicated that he planned to pay \$1,455 to settle the debt in SOR ¶ 1.g within the next 30 days. He did not make that payment. Applicant's spouse won a couple of casino jackpots that netted her \$4,066 in income from gambling in 2014, which one could reasonably argue should have gone toward their very large tax delinquency. As of November 2014, Applicant's wages were no longer being garnished, so they should have had an extra \$1,000 to \$1,200 a month to put toward his delinquent consumer credit debts or their seriously past-due federal taxes. There is no evidence that Applicant and his spouse submitted a reasonable Offer in Compromise to the IRS at that time. The debt in SOR ¶ 1.g was largely ignored. Applicant's spouse was pending surgery for a serious medical condition at that time, and her health was understandably a priority. Her treatment ended in March 2015 with a favorable prognosis. In April 2015, Applicant was promoted at work with an increase in his income of about \$13,000 annually. He contacted the lender in SOR ¶ 1.c about restarting monthly payments of \$450 toward that debt only to learn that a garnishment order had been issued. He made no effort to address even the smaller medical debt in SOR ¶ 1.f until August 2015. To the extent that AG ¶ 20(b) applies, it does not fully address the security concerns raised by his sizeable debt burden caused in part by his own poor decisions, which he attributes to post-traumatic stress from his work on the police force.

Applicant's wages continue to be subject to garnishment for the debt in SOR ¶ 1.c, presently at approximately \$670 every two weeks. The debt should be satisfied in the fall of 2016. Involuntary garnishment does not qualify for mitigation under AG ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," although it could implicate AG ¶ 20(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."

However, AG ¶ 20(c) and AG ¶ 20(d) apply in part in that Applicant satisfied the \$280 medical debt in collection (SOR ¶ 1.f) on August 19, 2015. Moreover, Applicant arranged to make payments starting in late August 2015 toward the debts in SOR ¶¶ 1.b and 1.g. He indicates that he has continued to pay \$150 a month toward the debt in SOR ¶ 1.b, although he provided proof of only one \$300 payment, which was made in January 2016. Applicant made monthly payments of \$168.66 on the debt in SOR ¶ 1.g from August 2015 through December 2015, when he negotiated a lower monthly payment of \$149 because of the increase in income taken by garnishment for the debt in SOR ¶ 1.c. His monthly payments are indicia, albeit belated, of his intent to address his debts.

Applicant's debt burden has been substantially lessened by the IRS acceptance of his Offer in Compromise for the \$95,982 tax lien. IRS documentation (AE K) shows that Applicant and his spouse met the payment provisions for their Offer in Compromise contract as of October 2015 and that the IRS tax lien would soon be released. It is unclear whether the IRS accepted the Offer in Compromise that had been originally rejected (*i.e.*, \$10,000 with a \$2,000 payment accompanying the offer) or an amended offer. Regardless,

Applicant and his spouse are relieved of repayment liability for a substantial amount of debt, provided they comply with their tax filing and payment obligations for the next five years.

Some financial concerns remain, however. About the payment required by the IRS under his Offer in Compromise, Applicant testified at his security clearance hearing in August 2015 that he would have to borrow the funds, likely from his 401(k), to make the payment. A third loan from his 401(k) would further reduce his net take-home pay when he and his spouse remain chronically behind on their mortgage. As of late July 2015, they were behind one full mortgage payment of \$1,733.01 and owed late charges of \$254.72. As of January 2016, they were about 1.5 months behind on their modified mortgage, although Applicant indicates that they were gaining three days each month toward eventually paying the mortgage on time. Applicant still owes over \$28,000 on SOR ¶ 1.b, approximately \$11,338 on SOR ¶ 1.c, and \$4,790 on SOR ¶ 1.g. Apparently, even a slight increase in the garnishment of his wages from \$640 to \$670 per pay period strained his finances to the point where he had to lower his monthly payment on SOR ¶ 1.g from \$168.66 to \$149 per month. Applicant has not yet shown a sustained ability to live within his means without taking on new debt, and there is no evidence that he has had financial counseling that could help him make sound financial judgments going forward.

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's continued security eligibility is endorsed by both the former director of security and by the current acting director of security at his workplace. Applicant demonstrated such competence and professionalism in carrying out his duties that the former director asked him to accept a management position for the sake of the department, knowing that Applicant had serious financial issues. His confidence in Applicant being the right candidate for the job was not misplaced. Applicant managed to turn the organization

around in the few months since he assumed leadership. His positive work record weighs in his favor under the whole-person assessment.

A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of the evidence to determine if a nexus exists between established facts and a legitimate security concern. Even considering the significant impact of unforeseen circumstances, his handling of his personal financial matters, including his federal tax debt and his mortgage, is incompatible with the good judgment that must be demanded of persons granted security clearance eligibility. Sometime in 2013, Applicant and his spouse received \$68,000 in an insurance settlement from an accident in March 2010. Only about \$25,000 of the settlement went to pay medical bills. Applicant set aside \$10,000 for his delinquent federal taxes, although he no longer had any of those funds as of August 2015. In addition to being late on the mortgage (SOR ¶ 1.a), Applicant still owes over \$44,128 on the debts in SOR ¶¶ 1.b, 1.c, and 1.g. 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). Applicant is clearly credited with making payments for the past six months toward his delinquent debts, but more progress is needed for me to safely conclude that his financial problems are not likely to persist. For the reasons already discussed, I am unable to conclude that it is clearly consistent with the national interest to continue Applicant's security clearance eligibility 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
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	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