



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 17-02599
)	
Applicant for Security Clearance)	

Appearances

For Government: Rhett E. Petcher, Esq., Department Counsel
For Applicant: *Pro se*

10/12/2018

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant stopped paying on some of his credit-card accounts in 2014 in anticipation of filing a Chapter 13 bankruptcy petition. He mismanaged his finances by taking on more debt than he could repay. He settled two credit-card accounts by late January 2016, but other delinquencies went unpaid. The settlement of another debt after his security-clearance hearing is not enough to fully mitigate the concerns about his financial judgment. Clearance is denied.

Statement of the Case

On August 29, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F, financial considerations. The SOR explained why the DOD CAF was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DOD CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative*

Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position (AG) effective within the DOD on June 8, 2017.

Applicant responded to the SOR on October 4, 2017, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On April 18, 2018, 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 April 23, 2018, I scheduled a hearing for May 15, 2018.

At the hearing, four Government exhibits (GEs 1-4) were admitted. A November 21, 2017 letter forwarding the proposed GEs to Applicant and a list of the GEs were marked as hearing exhibits (HEs I-II) for the record but not admitted in evidence. Eighteen Applicant exhibits (AEs A-N) were admitted in evidence, and Applicant testified, as reflected in a transcript (Tr.) received on May 23, 2018.

I held the record open to June 5, 2018, for post-hearing submissions from Applicant. On May 31, 2018, Applicant submitted five documents, which were admitted without objection as AEs O-S. No additional documents were received by the deadline.

Summary of SOR Allegations

The SOR alleges under Guideline F that, as of August 29, 2017, Applicant owed charged-off credit-card balances totaling \$31,287 (SOR ¶¶ 1.a-1.c and 1.e); a charged-off line of credit for \$740 (SOR ¶ 1.d); medical collection debt totaling \$150 (SOR ¶¶ 1.f-1.i); and a credit-card collection debt of \$670 (SOR ¶ 1.j). When Applicant responded to the SOR, he admitted the charged-off debts in SOR ¶¶ 1.a-1.e. He denied the medical collection debts based on his belief that they had been paid. He also denied the \$670 credit-card debt (SOR ¶ 1.j) in that it was a duplicate listing of the charged-off credit-card debt in SOR ¶ 1.e, which had a then balance of \$408. Applicant attributed his financial problems to overspending and his own mismanagement. He twice rolled consumer-credit debt into his mortgage to where his monthly mortgage payment exceeded half of his take-home income. Applicant detailed some steps he has taken toward resolving his debts. (Answer.)

Findings of Fact

After considering the pleadings, exhibits, and transcript, I find that the debt in SOR ¶ 1.j is an earlier balance of the debt in SOR ¶ 1.e and does not represent a new debt. Additional findings of fact follow.

Applicant is a 58-year-old software engineer with a bachelor's degree awarded in May 1981. (GE 1; Tr. 57.) He and his spouse separated in 2014 after 23 years of marriage, although they were in the process of reconciling as of May 2018. (Tr. 59.) He and his spouse have two grown children, now ages 21 and 25. Applicant was granted a top secret security clearance and sensitive compartmented information (SCI) access eligibility in 2010. His latest background investigation was conducted while he was working for his

previous defense-contractor employer (company X). (GEs 1-2.) In January 2018, Applicant began working for another defense contractor, and he needs a secret clearance for his current employment. (Tr. 23, 29, 58.)

Applicant built his home in 1997. In 1998, he and his spouse obtained their first mortgage. (Tr. 64.) Over the years, he and his spouse relied on consumer credit for purchases. His spouse did not work outside the home for most of their marriage, but he earned enough income to where he did not see a need to monitor their spending or maintain a household budget. Applicant earned \$152,805 in 2000 while working as a consultant. (GEs 1-2; AE A.)

In 2004, after about six months of unemployment (Tr. 63), Applicant began working in a permanent position as a principle software engineer with a commercial company at less income than as a consultant but with more security. His salary was \$90,979 in 2005. (GE 1; Answer; AE E; Tr. 54.) In 2008, Applicant began working for company X. (GE 1; Tr. 23.)

Applicant twice refinanced the mortgage on his home to pay off some credit-card debts. (GE 2; Answer; Tr. 50.) Available credit reports (GEs 3-4; AEs A-D) show he and his spouse obtained a 30-year mortgage loan in 2005 for \$378,000, to be repaid at \$2,263 per month. They made their mortgage payments on time for several years. (GE 3.)

On the death of his mother, Applicant inherited some funds in approximately 2012 that he admits he mismanaged. (Tr. 86-87.) Despite some financial strain, his spouse refused to look for work outside the home. (GE 2.)

In December 2013, Applicant notified his supervisor and security officer that, through financial mismanagement on his part, his monthly mortgage obligation was half of his take-home pay. While he was not then behind on any accounts, he had accrued credit-card debt over time. He indicated that he realized that he had to deal with his financial situation and had engaged the services of a financial advisor. His mortgage loan was current, but the principal balance was higher than his home was worth so a conventional refinance was “all but impossible.” Applicant added that he and his spouse were taking measures to further reduce their expenses and create additional income, including by selling assets. (AE A.)

Struggling to make the monthly minimum payment on his credit-card debts, Applicant retained a bankruptcy attorney with the intention of filing a Chapter 13 wage-earner plan.¹ (Tr. 66-67.) His income was too high for a Chapter 7 bankruptcy filing. (Tr. 68.) In September 2014, Applicant updated his financial situation for his employer. He indicated that he planned to file for a Chapter 13 bankruptcy within the next 90 days and

¹ Applicant testified that he first talked to a bankruptcy attorney after he and his spouse separated, “probably [in] August or September of 2014.” (Tr. 67.) However, he informed his then employer that he had stopped paying on his home loan and his credit-card accounts on the advice of the bankruptcy attorney in anticipation of the bankruptcy filing. Available credit reports show that he made no payments on some credit-card accounts after June 2014, so it is likely that he consulted with a bankruptcy attorney before August 2014.

expected to pay a manageable \$450 a month under his Chapter 13 plan. He had stopped paying his credit-card debts because they were to be included in the bankruptcy, and his accounts were 90 days past due. His mortgage loan was 60 days past due, but he was working to refinance his loan through the Home Affordable Modification Program (HAMP). His employer notified the government that Applicant was having some financial issues. (AE A.)

For a periodic investigation of his security clearance eligibility, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86) on November 3, 2015. In response to the financial record inquiries, Applicant indicated that he stopped paying on his credit cards on the advice of a bankruptcy attorney. His mortgage servicer was not willing to work with him before he fell behind 60 days on his loan and indicated that he would be filing a bankruptcy petition. He disclosed that he and his spouse were currently working with their mortgage servicer to modify their loan under HAMP. Applicant indicated that he made some mortgage payments by selling assets, but it was not a sustainable plan going forward. To obtain a modification under the HAMP, he needed to file a separation agreement with his wife, who would then sign a quitclaim deed. He anticipated that the modification of his mortgage would free up about \$600 per month in income. Applicant responded affirmatively to inquiries about financial delinquency on routine accounts. He disclosed that he was delinquent on the accounts in SOR ¶¶ 1.a (\$24,000), 1.b (\$3,000), 1.c (\$5,000), 1.d (\$950), and 1.e (\$1,000); on his home mortgage; and on two consumer credit-card accounts (not alleged in the SOR) that were past due for \$6,000 and \$8,000. Applicant attributed his consumer-credit delinquencies to his mismanagement of his inheritance and his sizeable mortgage obligation, which limited his ability to make his credit card payments. He planned to resolve his credit-card debts by a Chapter 13 bankruptcy filing. Applicant denied any intention to rely on consumer credit for any purchases in the future. (GE 1.)

In November 2015, the creditor owed the \$8,000 debt agreed to settle Applicant's balance of \$7,027 for \$2,811, payable in two payments of \$1,405. (AE L.) The debt was settled in December 2015. (GE 3.) Regarding the \$6,000 credit-card delinquency reported on his SF 86, Applicant obtained a credit card in May 2013 with a \$6,000 credit limit. He made no payments on the account after May 2014 and reportedly owed \$6,127 as of December 2015. (GE 4; AEs B-D.) In approximately late January 2016, after the creditor sought a judgment against him (AE K), Applicant legally settled the debt for less than its full balance.² (AEs A-D.)

Applicant and his spouse's mortgage loan was rated as past due throughout 2015. It was past due for \$9,805 as of November 2015, but was successfully modified in January 2016. (AE A.) Applicant has been current on the mortgage payments since then. (GE 4.) As of mid-January 2016, some of his credit-card accounts had been charged off, and some medical debts were reportedly in collection for \$30 (SOR ¶ 1.g), \$10 (SOR ¶ 1.h), and \$10 (SOR ¶ 1.i). (GE 3.)

² The letter from the creditor indicating that the debt was settled is dated January 28, 2016. A court record, dated March 1, 2016, shows that the creditor voluntarily withdrew its action. (AE K.) The file does not include the amount paid in settlement.

As of January 2016, Applicant had not filed for bankruptcy, apparently because his attorney “kept trying to figure out the right formula” for a Chapter 13 filing. (Tr. 68.) Applicant looked into alternative ways to address his debt, and, in early 2016, he discovered a “commonsense” program advocated by a radio personality who reported success in helping people out of debt. Applicant learned the value of budgeting, of having a long-term financial plan, and of debt inhibiting the accumulation of net worth. He started selling some assets to build a cash emergency fund of \$1,000. (Answer; Tr. 48-49.) He sold a 2007 or 2008 model-year vehicle, but he did not have enough money to make settlement offers on most of his delinquent credit-card debts. (Tr. 68-69.)

In December 2016, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). He admitted that he had mismanaged his inheritance and had neglected to manage his money. He had no explanation for his outstanding credit-card balances other than that he bought things that he did not need. He described himself as “house poor” because he had twice rolled credit-card debt into his home mortgage loan. He explained that after he refinanced, he continued to charge items on credit. On the advice of a bankruptcy attorney, he stopped paying on his some bills in 2014 so that he would be eligible for a bankruptcy filing and “special mortgage rewrite programs.” However, he later decided against filing for bankruptcy. He contacted some of his creditors and began negotiating settlements. He indicated that he would be making arrangements in early 2017 to settle other credit-card balances that had been charged off or placed for collection. Applicant denied using any credit cards after 2014. He paid down some of his debt by withdrawing some 401(k) assets, and he expressed his intention to withdraw the rest of the account (estimated at \$31,000) to make debt payments. Applicant explained that he did not want to withdraw all of his retirement funds in the same year because of the tax consequences and the loss of “thousands of dollars.” Applicant indicated that he was following the financial advice of a radio personality, who advocated repaying smaller debts first, not applying for new credit, paying only in cash, and establishing a budget. After he accumulated some emergency savings and improved his credit score, he planned to refinance his mortgage loan from a 30-year to a 15-year loan. Applicant did not recognize the medical collection debts on his record, but indicated that he would pay them if they were owed. (GE 2.)

By August 2017, Applicant had not made the promised payments toward his consumer-credit delinquencies, and the DOD CAF issued the SOR. In October 2017, Applicant responded that he had \$11,000 in reserve cash, \$10,000 of which he would use to pay down debt. (Answer.) At his hearing, Applicant attributed the delay in addressing his past-due debts in part to “trouble making additions to the amount of money [he] had stashed.” He was concerned that if he needed a new roof or a water heater, he might not have the funds available to pay for them. (Tr. 75-76.)

In late January 2018, Applicant left company X for a higher-paying position with his current defense contractor employer. His annual salary increased from \$118,000 to \$150,000, and he was paid a signing bonus of \$15,000 after taxes. (Tr. 52, 99-100.) He spent about \$1,000 of the bonus on tires for his spouse’s vehicle, but could not account for the rest of the money. (Tr. 87, 99-100.)

Available evidence reflects the following delinquency and payment histories for the SOR debts as of June 2018:

Charged-off credit card for \$22,854 (SOR ¶ 1.a)

Applicant's credit-card account with a credit union, which he opened in February 1999, was charged off for \$22,854 in December 2014. Date of last activity on the account was April 2014. As of September 2017, Applicant had made no payment on the balance. (GEs 1-4; AEs A-D.) In mid-February 2018, after he received the signing bonus from his current employer (Tr. 71), Applicant submitted an offer of \$8,000 to the credit union to settle the debt. (AEs J, M.) As of mid-May 2018, he had \$9,000 in his emergency fund and \$1,000 in his checking account, which was not enough to settle the debt, although he testified that he had a small gun collection that he could sell for an estimated \$10,000. (Tr. 50, 72, 82.) He had \$178,000 in a retirement account with company X that he could access because he is no longer employed by the company, although he was concerned about maximizing his money.³ (Tr. 83.) In late May 2018, the credit union agreed to accept \$12,190, payable by June 25, 2018, to settle the \$22,854 balance. (AE Q.) Applicant expressed an intention to withdraw some of his retirement funds to settle this debt and the overdraft debt in SOR ¶ 1.d, but he was waiting for his accountant to inform him about the correct amount to withdraw so that he is "prepared for any taxes due on both the settled debts and the early withdrawal from [his] retirement." (AE S; Tr. 70.) As of the close of the evidentiary record, there was no evidence that the debt had been paid or settled.

Charged-off credit card for \$4,515 (SOR ¶ 1.b)

Applicant opened a credit-card account with a retailer in April 2011. His account was charged off for \$5,326 in December 2014 due to nonpayment after June 2014. (GE 3.) As of January 2017, the creditor was reporting a past-due balance of \$4,515. (GE 4; AEs A-D; Tr. 79.) On August 9, 2017, the creditor cancelled \$3,472.86 of debt and issued a 1099-C, Cancellation of Debt form to Applicant for tax year 2017.⁴ (AE I; Tr. 79.) Applicant testified that he paid taxes on the amount of cancelled debt (Tr. 54), although he provided no corroborating documentation.

Charged-off credit card for \$3,510 (SOR ¶ 1.c)

Applicant's credit-card account with a retailer, which he opened in October 2011, was charged off and placed for collection for \$3,510 in June 2015 after nonpayment since

³ When asked whether he would be willing to withdraw retirement assets to pay the \$22,854 debt, Applicant responded:

If it comes down to it, I'm going to have to. I don't want to, but only because, as it stands, the future value of that \$22,000 comes out to more like half a million in 12 to 14 years, at roughly 8 to 9 percent growth. (Tr. 83.)

⁴ Applicant testified that he called the creditor several times about a settlement, the first time in "roughly" November 2017, but the creditor elected to cancel the debt. (Tr. 73.) The 1099-C shows that the creditor cancelled the debt before November 2017.

November 2014. (GEs 1-4; AEs A-D.) In mid-May 2018, the creditor agreed to settle the debt for \$1,580 payable in a lump sum by June 16, 2018. Applicant paid the \$1,580 on May 24, 2018. (AE P.)

Charged-off credit line for \$740 (SOR ¶ 1.d)

Applicant opened an overdraft-protection account in April 2002 with a \$1,000 limit. In late January 2015, a \$740 balance was charged off to profit and loss. (GEs 1-4; AEs A-D.) In mid-February 2018, Applicant notified the creditor of his willingness to pay the full balance to settle the debt. (AE J.) On May 30, 2018, the creditor gave him until June 25, 2018, to pay the debt. (AE Q.) He expressed his intention to withdraw retirement funds to pay the debt. (AE S.) As of the close of the record, there was no evidence that the debt had been paid or settled.

Charged-off credit card for \$408 (SOR ¶ 1.e, duplicated in SOR ¶ 1.j)

Applicant opened a credit-card account with a home-improvement retailer in September 2001. He made no payments on the account after June 2014, and a \$670 collection balance was owed as of June 2015. (GE 1, 3.) As of November 2016, the creditor was reporting a charged-off \$408 balance. (GE 4; AEs A-D.) Applicant had not paid the debt by late May 2018. He expressed an intention to pay the debt after his debts with the credit union (SOR ¶¶ 1.a and 1.d) have been settled. (AE M; Tr. 54.)

Medical collection debt for \$100 (SOR ¶ 1.f)

In September 2016, a \$100 medical debt from March 2016 was placed for collection. (GE 4; AEs B-D.) Applicant asserted in October 2017 that the debt was for service at a medical center and that it had been paid off for a long time. (Answer.) Available billing information for outpatient surgery at the medical center in March 2016 shows that \$100 was paid by credit card on February 3, 2017, and he had no outstanding balance as of May 2018. (AE G.) Available credit reports confirm that the debt was paid in 2017. (AEs B-D.)

Medical collection debt for \$30 (SOR ¶ 1.g)

In November 2015, a \$30 medical debt from June 2015 was placed for collection. (GEs 3-4.) Applicant asserted in October 2017 that the debt was a medical co-payment that he paid at the time of service. (Answer.) The debt was still on his credit record as of January 2017, but the information showing the outstanding collection balance was from December 2015. (GE 4.) The debt was not on his credit record with Equifax as of May 2018.⁵ (AE C.) Applicant presented a document from a medical practice, showing that he

⁵ Applicant presented credit reports from Trans Union (AE B), Equifax (AE C), and Experian (AE D) dated May 10, 2018. Trans Union listed no collection debts. Equifax listed only the collection debt in SOR ¶ 1.f. Applicant entered in evidence an incomplete copy of his Experian credit report, which does not include the collections section.

had a zero balance on his account as of May 2018 (AE H), although there is no evidence to tie the medical provider to the collection debts in SOR ¶¶ 1.g-1.i.

Medical collection debt for \$10 (SOR ¶ 1.h)

In July 2015, a \$10 medical debt from February 2015 was placed for collection. (GEs 3-4.) Applicant asserted in October 2017 that the debt was a medical co-payment that he paid at the time of service. (Answer.) While the debt was still on his credit record as of January 2017, the information showing the outstanding collection balance was from November 2015. (GE 4.) The debt was not on his credit record with Equifax as of May 2018. (AE C.)

Medical collection debt for \$10 (SOR ¶ 1.i)

In April 2015, a \$10 medical debt from October 2014 was placed for collection. (GEs 3-4.) Applicant asserted in October 2017 that the debt was a medical co-payment that he paid at the time of service. (Answer.) While the debt was still on his credit record as of January 2017, the information showing the outstanding collection balance was from June 2015. (GE 4.) The debt was not on his credit record with Equifax as of May 2018. (AE C.)

Applicant has no open credit-card accounts for which he is legally responsible. (GE 4; AEs B-D.) He pays cash for purchases. (Tr. 82.) Applicant and his spouse's joint mortgage loan had a balance of \$290,772 as of May 2018. Monthly payments on the loan of \$2,880 were being paid on time. The current interest rate on the loan is 5.99%. He would like to refinance for a 15-year loan with a lower interest rate. (Tr. 53.) Applicant cosigned a student loan for his older daughter. The loan has a balance of \$27,029 that his daughter was repaying at \$234 per month. His credit was rated as fair by the credit-reporting agencies. (AEs B-C; Tr. 62.) His budget for June 2018 showed that his monthly expenses equal his income with \$1,000 going toward his retirement and almost \$745 to his emergency fund. (AE R.) He testified that he will never again become financially overextended. (Tr. 56.) He asserted that he has had a monthly surplus of about \$1,000 since his first paycheck with his current employer in February 2018. (Tr. 80.) However, he admitted that he had not stayed within his budget in that \$750 of the \$1,000 was being spent every month on activities such as "eating out too often." He also purchased a ham radio and two other minor items. (Tr. 81-83.)

As of May 2018, Applicant's first priority was retaining his home. His younger daughter and her husband live with him. (Tr. 50, 62.) His daughter gives him \$120 a month to offset the cost of her cellphone plan and her car insurance. (T. 61.) In May 2018, he paid \$2,500 for a class for his daughter to help her obtain a higher-paying job. (Tr. 81, 88.) Applicant has had no other large, unexpected expenses in the last two years. (Tr. 88.)

Applicant's supervisor at company X from 2008 until January 2018 corroborated that Applicant self-reported that he had financial issues. To his knowledge, Applicant had violated no security practices or procedures. He observed Applicant to handle classified information appropriately. He recommended continued security clearance eligibility for

Applicant with the caveat that Applicant reconcile his financial situation. He understands that Applicant left company X in part to fix his financial situation. (Tr. 24-30.)

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(a), 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 national security eligibility will be resolved in favor of the 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 EO 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 concerns about financial considerations are articulated in AG ¶ 18:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

Applicant mismanaged his personal finances by taking on more consumer-credit debt than he could reasonably afford to repay. He twice refinanced the mortgage loan on his home to address credit-card debt. By 2014, the principal balance of his mortgage loan exceeded the value of his home, and he was struggling to make the monthly minimum payments on some credit-card accounts. He stopped paying on his home loan so that his lender would work with him to modify his home loan under HAMP. In anticipation of a bankruptcy filing that never occurred, he stopped paying on some credit-card accounts and on an overdraft-protection account. As of his November 2015 SF 86, Applicant owed charged-off balances totaling \$32,027 on five accounts listed in the SOR (SOR ¶¶ 1.a-1.e). He candidly disclosed on his SF 86 that two additional credit-card accounts were delinquent for approximately \$14,000 (credit information shows the balances totaled \$13,154). Those two debts were not alleged in the SOR, presumably because they were settled for less than the full balances in December 2015 and January 2016. The unalleged debts cannot provide grounds for disqualification because they were not alleged. The

evidence of delinquency on the other accounts (SOR ¶¶ 1.a-1.e) is more than ample to raise financial considerations security concerns.

Available credit information indicates that four medical debts totaling \$150 were placed for collection (SOR ¶¶ 1.f-1.i) between April 2015 and September 2016. Applicant asserts that the debts were paid at the time of service and were erroneously reported as collection debts. Under ¶ E3.1.14 of the Directive, the government has the burden of presenting evidence to establish controverted facts. The Appeal Board held in ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010) that a credit report is sufficient to meet the government's burden of producing evidence of delinquency:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

The small medical debts in SOR ¶¶ 1.g-1.i were still on Applicant's credit record as of January 2017, but there had been no update to the delinquency information since 2015. The credit-reporting agencies were no longer reporting the debts on his credit report as of May 2018. The Fair Credit Reporting Act requires removal of most negative financial items from a credit report seven years from the first date of delinquency or the debt becoming collection barred because of a state statute of limitations, whichever is longer.⁶ Debts may be dropped from a credit report upon dispute when creditors believe the debt is not going to be paid or when the debt has been charged off. The mere fact that debts have been deleted from a credit report does not necessarily mean that they were not owed at one time. Applicant presented medical billing records from providers that show zero balances, although there is no information tying the collection debts to those providers. Even so, those debts are so minor (\$30, \$10, and \$10) that they have likely been paid, perhaps after collection. Regarding the \$100 medical collection debt (SOR ¶ 1.f), the evidence shows that Applicant paid \$100 to the provider medical center on February 3, 2017, for services incurred in March 2016. The debt appears to have been paid after it was placed for collection, but before the SOR was issued.

Although collection debt raises some questions about financial judgment, the primary concern in this case is with Applicant's admitted overspending on credit cards and mismanagement of his consumer-credit accounts. Applicant is not required to be debt free, but he is required to manage his finances in a way as to exhibit sound judgment and responsibility. Three disqualifying conditions under AG ¶ 19 apply:

(a) inability to satisfy debts;

⁶ Title 15 U.S.C. § 1681c. See Federal Trade Commission website, Summary of Fair Credit Reporting Act Updates at Section 605, <https://www.consumer.ftc.gov/articles/pdf-0111-fair-credit-reportingact.pdf>.

(c) a history of not meeting financial obligations; and

(e) consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators.

The burden is on Applicant to mitigate the evidence of financial delinquency. One or more of the following conditions under AG ¶ 20 may apply:

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

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

(c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

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

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

AG ¶ 20(a) has some applicability in that the consumer-credit debts became seriously delinquent in 2014. They were not incurred recently. However, the Appeal Board recently affirmed that unresolved debts are a continuing course of conduct. See ISCR Case No. 17-03146 at 2 (App. Bd. Jul. 31, 2018) (citing ISCR Case No. 15-08799 at 3 (App. Bd. Nov. 3, 2017)). As of Applicant's security clearance hearing in May 2018, Applicant had not made any payments to satisfy or settle the delinquencies in SOR ¶¶ 1.a-1.e, although one creditor (SOR ¶ 1.b) cancelled his debt in 2017.⁷

⁷ The 1099-C shows that \$3,472.86 of debt was cancelled. As of January 2017, Equifax was reporting a \$4,515 charged-off balance. It is unclear whether the creditor would pursue Applicant for what may be interest on the delinquency that was not included in the amount of debt cancelled.

AG ¶ 20(b) has limited applicability. Although Applicant may not have had any control over his spouse, who was unwilling to find work outside the home for the income that they needed to pay their debts, he caused his own financial difficulties by excessively relying on credit cards; taking on higher mortgage debt to pay off credit cards; and mismanaging his inheritance. Applicant showed good financial judgment in several aspects since 2014. Chiefly, he stopped using credit cards and opened no new accounts. He modified his home loan successfully in January 2016, and his loan has been current since then. In 2016, he established a plan to address his financial issues, starting with accumulating reserve funds for an emergency and budgeting for expenses. Yet, it is difficult to find that he has acted fully responsibly under AG ¶ 20(b) when he gave so little priority to addressing his known consumer-credit delinquencies. By his December 2016 interview with an OPM investigator, he had already decided against filing for bankruptcy. He indicated that he would make repayment arrangements with his creditors in early 2017. He had no repayment plans established for his delinquent credit-card debts as of August 2017 despite annual employment income exceeding \$100,000. The creditor in SOR ¶ 1.b charged off his account for \$3,472.86 in August 2017 and would not agree to a settlement, but there is no indication that his other creditors were unwilling to work with him had he made timely efforts to address his debts.

AG ¶¶ 20(c) and 20(d) partially apply. Applicant settled two non-alleged delinquent credit-card accounts shortly after he completed his SF 86, although it must be noted that the debts were settled after collection, and in the case of the \$6,127 credit-card debt, after the creditor had sought a financial judgment against him. On May 24, 2018, Applicant paid \$1,580 in full settlement of the \$3,510 debt (SOR ¶ 1.c). It was not established that he currently owes any medical collection debt. AG ¶ 20(e) apply to the medical debts and to the debt in SOR ¶ 1.j, which alleges an earlier balance of the debt in SOR ¶ 1.e and is not an additional delinquency.

In February 2018, Applicant proposed to settle the \$22,854 charged-off debt (SOR ¶ 1.a) for \$8,000 and to full satisfy the \$740 charged-off debt (SOR ¶ 1.d). The credit union is willing to settle the debts for \$12,190 and \$740. Despite his annual salary of \$150,000 and a signing bonus of \$15,000 after taxes, Applicant did not have sufficient reserve funds to meet the terms. As of the close of the record, he was planning to use retirement assets to pay the debts, but he was reportedly seeking advice from his accountant to ensure that a retirement withdrawal would not lead to future financial difficulties. He had no pending settlement offer or repayment arrangements with the creditor in SOR ¶ 1.e, although he expressed an intention to pay the debt after he resolved his charged-off balances with the credit union. Applicant is not required to pay off every debt in the SOR to be granted security clearance eligibility. All that is required is that he has established a plan to resolve his financial problems and taken significant actions to implement that plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). However, the record does not support his post-hearing assertion (AE S) that his SOR debts have been fully resolved, and concerns persist about his financial judgment.

Of the \$32,027 in alleged credit-card delinquency, Applicant has not resolved \$24,002 in defaulted debt on three accounts. While it may have been financially

advantageous for him to accumulate assets in the case of an emergency, his delay in addressing his past-due debts was also caused by consideration of his own finances and his failure to comply with his budget. He did not want to lose “thousands of dollars” by paying the full \$22,854 owed the credit union. He spent \$1,000 of his signing bonus on tires for his spouse’s vehicle, but he could not account for the remainder of his bonus. Based on his current income, Applicant should have \$1,000 a month in discretionary income to pay down his debts. He admitted at his hearing that he was spending about \$750 of those funds by eating out and buying discretionary items, such as a ham radio. While he has not incurred new debt by those expenditures, his discretionary income could have gone toward paying his remaining delinquent obligations. The Government must be assured that persons with security clearance eligibility can be counted on to fulfill their obligations, even when it may be personally disadvantageous to do so. For the reasons noted, Applicant has raised some doubt in that regard.

Whole-Person Concept

In assessing the whole person, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). The analysis under Guideline F is incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

The security clearance adjudication involves an evaluation of an applicant’s judgment, reliability, and trustworthiness in light of the security guidelines in the Directive. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). Applicant handled classified information appropriately even when he was having serious financial difficulties, and he is credited with self-reporting his financial issues to his former employer. However, 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, I am unable to find that it is clearly consistent with the national interest to continue Applicant’s security clearance 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
Subparagraphs 1.a-1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.e:	Against Applicant
Subparagraphs 1.f-1.j:	For Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Elizabeth M. Matchinski
Administrative Judge