



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 17-03228
)	
Applicant for Security Clearance)	

Appearances

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

10/24/2018

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant's second mortgage and two credit-card accounts were charged off for nonpayment. Some small medical debts and a car insurance debt were placed for collection. More progress is needed toward addressing his delinquencies. Personal conduct concerns because of alleged deliberate falsification were not established. Clearance is denied.

Statement of the Case

On September 28, 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, and Guideline E, personal conduct. 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 submitted an initial response to the SOR on November 15, 2017, in which he answered the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). At the request of the DOD CAF, on December 13, 2017, he clarified his response to the Guideline E allegation (SOR ¶ 2.a). 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 24, 2018, I scheduled a hearing for May 17, 2018.

At the hearing, three Government exhibits (GEs 1-3) were admitted. A January 3, 2018 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. Nineteen Applicant exhibits (AEs A-S) were admitted in evidence, and Applicant testified, as reflected in a transcript (Tr.) received on June 8, 2018.

I held the record open, initially to June 16, 2018, for post-hearing submissions from Applicant. On June 11, 2018, Applicant requested an extension of the deadline (AE T), and he submitted a character reference letter, which was admitted in evidence (AE U) without objection. I extended the deadline to June 29, 2018, and two exhibits (AEs V-W) were timely submitted and entered into evidence. On July 11, 2018, Applicant submitted a personal statement. Because the case was still pending a decision because of my workload, I re-opened the record for comment by the Government by July 27, 2018. On July 23, 2018, Department Counsel indicated that the Government had no objection. I admitted the statement as AE X. On August 15, 2018, Applicant requested that I consider email correspondence (AE Y) between him and the DOD CAF. On August 16, 2018, I advised the parties that I would accept the correspondence in evidence, subject to any objections, but that the record was closed for additional documents. Department Counsel did not file any objection, and I admitted the exhibit in the record.

Summary of SOR Allegations

The SOR alleges under Guideline F that, as of September 28, 2017, Applicant owed \$24,496 on a charged-off mortgage account (SOR ¶ 1.a); charged-off credit-card balances totaling \$15,378 on three accounts (SOR ¶¶ 1.b-1.d); \$173 in past-due debt on a federal student loan for \$10,162 (SOR ¶ 1.e); a \$231 insurance debt in collection (SOR ¶ 1.f); and four medical collection debts totaling \$194 (SOR ¶¶ 1.g-1.j). Under Guideline E, Applicant allegedly falsified an October 2016 Electronic Questionnaires for Investigations Processing (e-QIP) by responding negatively to financial record inquiries concerning delinquency involving routine accounts (SOR ¶ 2.a).

When Applicant answered the allegations, he denied the mortgage delinquency because he did not recognize the creditor as a lender with whom he ever had a mortgage. He admitted the credit card debts, but explained that he was only an authorized user on his spouse's account in SOR ¶ 1.c (\$5,698). Applicant admitted that he had previously been

late on his student loan payments, but his loan was brought current three months ago. He asserted that he has a zero balance on the insurance debt (SOR ¶ 1.f); that he settled the \$93 (SOR ¶ 1.g) and \$25 (SOR ¶ 1.j) medical collection debts; and that he was investigating two \$38 medical collection debts (SOR ¶¶ 1.h and 1.i). Applicant denied that he had deliberately falsified his e-QIP. He explained that he was given one night to complete the form when he was away from home on training and that he had advised onsite personnel he did not have the information available to complete the form. (Answer.)

Findings of Fact

After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 44-year-old high school graduate who has worked as a uniformed protection officer for his employer, a defense contractor, since October 2016. He was employed as a county correctional officer from March 1997 to August 2016. Applicant and his spouse have been married since July 2000, and they have three children, ages 16, 14, and 9. (GEs 1-2; Tr. 79.) Their children have some medical issues. (Tr. 72.)

Applicant and his spouse purchased their current residence in July 2006, acquiring an adjustable-rate mortgage loan for \$256,500. Applicant recalls that the initial mortgage payments were only \$1,300 a month. (GE 3; Tr. 88-90.) In May 2007, they obtained a second mortgage for \$24,496 (SOR ¶ 1.a) to pay for household repairs and appliances. (GEs 2-3; AE R; Tr. 89.) In October 2007, the monthly obligation on their primary mortgage increased from \$2,028 to \$2,694. (AE O.) Applicant was unable to refinance for a fixed-rate mortgage at that time because his home was worth less than the mortgage debt. (Tr. 92.) In the fall of 2008, their mortgage payment decreased to \$2,512. (AE O.) Applicant and his spouse struggled to make that mortgage payment. At times, they relied on the credit cards in SOR ¶ 1.c and ¶ 1.d to cover some of their mortgage payment. (Tr. 94-95, 109.)

Over the next few years, Applicant and his spouse were late in paying some bills. They stopping paying on some accounts, including their second mortgage. In January 2010, they obtained a car loan for \$14,736. They were chronically late, from 30 to 90 days, in making their \$297 car payment. Applicant worked overtime when he could, and he held a second job as a security guard at a high school 16 hours a week from July 2012 to June 2014, but they still struggled to pay their bills. (GEs 2-3; Tr. 96.)

Applicant was recognized for his professionalism and teamwork as a county correctional officer, including in April 2016. (AE I.) However, he went 12 years without a raise, and earned only \$21 an hour after 20 years on the job. (Tr. 80, 96.) In August 2016, he lost his job after he submitted an inaccurate claim for hours worked, which he maintains was due to a clerical error. (GE 2; Tr. 68.) While unemployed and without health insurance, Applicant incurred out-of-pocket prescription costs of \$630 in September 2016 for his son. (Tr. 84-87.)

Applicant had “probably \$80,000” in his retirement contributions disbursed to him when he was terminated from his job as a corrections officer. (Tr. 117, 120.) Within six months, he spent \$40,000 to \$41,000 of the funds on cars for himself and his spouse. (Tr. 120-121.) The remainder went to catch up on their primary mortgage and other living expenses, including electric and gas debts of approximately \$2,000 each. They were so delinquent on their gas bill that the meter was removed from their house, and the company would not accept installment payments. (Tr. 121-123.)

In mid-October 2016, Applicant was hired by his current employer, pending the government’s approval of his assignment to its contract with the company. (GE 2.) He was sent for one month of training in another state. He was advised to bring proof of citizenship, a valid social security card, and valid photo identification acceptable for federal identification. He was not told to bring all the information that he might need to complete an accurate e-QIP. (AE D.) He was advised that no controlled substances could be used during the training, so he discontinued his prescription medications for his attention deficit hyperactivity disorder (ADHD). (AE X; Tr. 72.)

Applicant reported for training on October 24, 2016. The next day, he was advised that he needed to complete an e-QIP, and he received an email with the information needed to access the form electronically. (AE D.) Applicant expressed some concern to another trainee that he did not have the information available to accurately complete the form. He was instructed to do the best that he could. He felt stressed and unprepared to complete the task, but he completed the form in the hotel lobby that night. (AE X; Tr. 63-64.) He responded negatively to the e-QIP’s financial record inquiries concerning delinquency involving routine accounts, including whether he had any bills or debts turned over to a collection agency in the last seven years and whether he had any account or credit card suspended, charged off, or cancelled in the last seven years for failing to pay as agreed. (GE 1.)

A check of Applicant’s credit in late January 2017 showed charged-off balances of \$24,496 on his second mortgage and \$5,752, \$5,698, and \$4,108 on three consumer-credit accounts. Some smaller debts were reportedly in collection. A car loan obtained in January 2010 was \$692 past due on a \$720 balance. (GE 3.) Applicant denies that he had any intention to conceal his financial delinquencies, citing the lack of notice and information available at the time to complete the form accurately. The training classmate, to whom Applicant had confided his concerns about the form, indicates that Applicant lacked adequate time and opportunity to complete the form. (AE G.)

On May 17, 2017, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). When asked about any financial issues, he responded “Yes” to whether he had a credit card suspended, charged off, or cancelled and to being over 120 days delinquent on a credit card because of the debt in SOR ¶ 1.b. He explained that he fell behind on the debt when his mortgage payment increased and that he had no success in working out a payment plan with the credit lender. He asserted that he paid down the debt to \$3,500 through a collection entity. Applicant denied that he had any additional delinquencies or financial problems. He was then confronted about the other

debts on his credit record.¹ He recognized the credit card debts in SOR ¶¶ 1.c and 1.d and his student loan, which he maintained was deferred. He did not recognize the medical collection debts, and explained that his spouse handles the bills. Applicant explained that he had not previously disclosed the debts in SOR ¶¶ 1.b and 1.d due to error; the student loan because it was deferred; and the credit-card debt in SOR ¶ 1.c because he was only an authorized user on his spouse's account. Regarding his second mortgage (SOR ¶ 1.a), Applicant denied there was any problem because he combined it with his primary mortgage when he refinanced. Applicant described his financial situation as good in that he was paying his bills on time. He attributed the delinquencies to the financial strain caused by the increase in his monthly mortgage obligation. Applicant expressed his intention to investigate the adverse credit information on his record and pay his debts. (GE 2.)

On May 25, 2017, Applicant was re-interviewed to provide documentation about his financial accounts, which showed that the creditor in SOR ¶ 1.c had obtained a financial judgment against his spouse. The court determined on April 6, 2017, that she had no present ability to repay the \$5,843 balance. He provided documentation showing that Trans Union had deleted the mortgage debt (SOR ¶ 1.a) from his credit report. He asserted to the investigator that the debt was paid. He presented documentation showing that he had requested a financial hardship deferment of his federal student loan on February 16, 2017, and asserted that it was not delinquent. Applicant had requests pending with Trans Union to report the status of the account in SOR ¶ 1.b as closed and to verify the balance of the credit-card account in SOR ¶ 1.d. Regarding the medical collection accounts, Applicant explained that his spouse paid their medical bills. Applicant expressed his intention to inquire about the accounts discussed and pay them. (GE 2.)

Available evidence reflects the following delinquency and payment histories for the SOR debts:

Charged-off mortgage loan for \$24,496 (SOR ¶ 1.a)

Applicant and his spouse's second mortgage has been delinquent since May 2010. (AE R.) Their account was charged off for \$28,019 in February 2011, but they then made monthly payments from \$200 to \$250 through July 2012. A last payment of \$100 in September 2012 reduced the balance to \$24,496. (GE 3; AE E.) Applicant indicated during his May 2017 interview with the OPM investigator that he made monthly payments of \$225 on the loan until approximately 2008, when he combined the debt with his primary mortgage in a refinancing. Around 2011, Applicant noticed the charged-off second mortgage on his credit report and disputed the debt. (GE 2.) Trans Union removed the credit entry with the original lender from his credit profile in February 2013. (AE E.) Available evidence shows that the debt had been transferred, so it is likely that the original lender could not verify the debt.

As of January 2017, the creditor now holding the debt (SOR ¶ 1.a) was reporting a charged-off balance of \$24,496. (GE 3.) In May 2017, Applicant told the OPM investigator

¹ Applicant testified that he did not recall some debts until they were brought up by the investigator. (Tr. 78.)

that he contacted the creditor, who billed him for the debt, and that he was advised to submit loan documents proving the debt was either paid or combined with his primary mortgage. He told the investigator that he intended to send the loan documents to the creditor. (GE 2.) The creditor billed him every month, including in September 2017 (AE R), for the principal balance of \$24,496 on the loan. (Tr. 100.) In late November 2017, Applicant disputed the debt with the creditor. (AE R.) The creditor proved to him that it legitimately held the debt, so Applicant is no longer disputing it. (Tr. 55-56; 99.) Sometime during the second week of May 2018, Applicant applied to his primary mortgage lender to modify his loan to include this debt. Action on his application is pending an appraisal on his home. If he is denied, he intends to repay the charged-off second mortgage at \$150 a month. (Tr. 56-58, 101.)

Charged-off credit account for \$5,572 (SOR ¶ 1.b)

Applicant and his spouse opened a joint credit account in August 2008 with a \$5,000 credit limit for dental work. (GE 3; Tr. 102-103.) He paid on the debt until July 2011, and in October 2011, the creditor charged off the account for \$5,752. As of January 2017, all three credit reporting agencies were reporting a balance of \$5,752 (\$969 past due). (GE 3.) He indicated during his May 2017 subject interview that, after being contacted by a collection entity, he began repaying the debt at \$50 to \$100 a month. He could not recall the date on which he began making payments, but he believed the debt had been paid down from \$5,752 to \$3,500. (GE 2.) Applicant contacted the creditor after he received the SOR, but the account had been removed from collections. (Tr. 103-104.) In early January 2018, Applicant and his spouse asked the creditor to contact them about resolving the debt. (AE N.) As of mid-May 2018, they were still awaiting repayment terms from the creditor. (AE H; Tr. 58-59, 103.) Applicant presented no recent credit information that could corroborate the reduced balance of \$3,500. High credit on the account is reported to have been \$3,826.

Charged-off credit card for \$5,698 (SOR ¶ 1.c)

Applicant was an authorized user on his spouse's credit-card account opened in February 2000. They used the credit card for groceries and medicine. (Tr. 59.) The creditor charged off a balance of \$5,698 because of nonpayment after October 2013. In October 2015, the creditor was awarded a judgment of \$5,484 against Applicant's spouse. (Tr. 105.) Applicant indicates that they heard nothing further about the debt until January 2017, when his spouse was summoned to court to answer for nonpayment of the judgment. (AE Q.) The court determined in April 2017 that his spouse did not then have the financial means to pay the debt because she had no income apart from social security disability income (SSDI). Applicant testified that he initially agreed to make \$25 payments on the debt but did not make those payments. (Tr. 105.) In December 2017, Applicant entered into an agreement in court to pay the accrued judgment balance of \$5,906 for his spouse at \$50 a month starting in mid-January 2018. (AE Q; Tr. 59-60.) Applicant began repaying the debt in April 2018. He had made two payments as of late May 2018. (Tr. 61, 106.) He admits that he did not make the payments required from January through March 2018. When asked for his reason, he responded that he "just didn't get to pay it." He then added

that his basement had been flooded with sewage around that time and in late March or early May 2018, he had water damage in his house from a burst water pipe. (Tr. 107.)

Charged-off credit card for \$4,108 (SOR ¶ 1.d)

Applicant and his spouse opened a joint credit-card account in August 2005 with a \$5,000 credit limit. High credit on the account reached \$5,066. In March 2014, the creditor charged off the account for \$4,108. As of January 2017, the charged-off balance was still reported on Applicant's credit report as an outstanding delinquency. (GE 3.) During his first interview in May 2017, Applicant asserted that he paid \$125 per month on the account until 2009. He lacked current information about the debt, and he indicated that he would look into the debt. A week later, Applicant told the OPM investigator that Trans Union was investigating the debt. (GE 2.) In early January 2018, Applicant and his spouse asked the creditor to contact them about resolving the debt. (AE M.) Just days before his security-clearance hearing, Applicant entered into an agreement to repay the debt at \$25 monthly. (AE H; Tr. 61, 108.)

Student loan past due for \$173 (SOR ¶ 1.e)

Applicant obtained federal student loans of \$8,455 and \$727 for college studies that he did not complete. (GEs 2-3; AE A.) The loans were consolidated for repayment purposes. He explained in May 2017 that he had made \$38 monthly payments until 2009, when he applied for a deferment. He presented no documentation showing his loan was deferred, but available credit records suggest that he made no payments between hardship deferments. His loan was 120 days past due from July 2012 through October 2012, June 2015 through December 2015, and July 2016 through September 2016. (AE S.) As of December 2016, his account was 90 days past due for \$173 on a \$10,162 balance. (GE 3.) His student loan was current in January 2017 but 90 to 120 days late from February to May 2017. (AE S.) In February 2017, Applicant requested a financial hardship deferment, which he asserts was granted through June 2017. (GE 2.) Documentation shows that he made \$85 monthly payments in August 2017 and September 2017. (AE A.) He testified that he has continued to make the monthly payment through automatic deduction. (Tr. 62, 109.) After his January 2018 payment, his student-loan balance was \$9,627. (AE S.)

Insurance collection debt for \$231 (SOR ¶ 1.f)

In October 2014, an insurance company placed a \$231 debt from August 2014 for collection. (GE 3.) Applicant did not recognize the debt during his May 2017 subject interview. (GE 2.) He then contacted the creditor and was told the debt had been paid. (AE H.) When he answered the SOR, he asserted his account had a zero balance, and the debt had been removed from his credit. He provided a telephone number for the creditor, and added that the collection agency would provide a confirmation letter. (Answer.) He explained at his hearing that he was double billed and so owes no balance. (Tr. 62.)

Medical collection debt for \$93 (SOR ¶ 1.g)

In June 2015, a \$93 medical debt from May 2012 was placed for collection. (GE 3.) In May 2017, Applicant told the OPM investigator that he recalled seeing the name of the collection entity on mail, but he knew nothing about it because his wife handles the bills. (GE 2.) Applicant paid the debt in mid-October 2017. (AE B.)

Medical collection debt for \$38 (SOR ¶ 1.h)

As of January 2017, the credit bureaus were reporting that a \$38 medical debt from July 2011 was placed for collection in August 2012. (GE 3.) Applicant did not recognize the debt when he was confronted about it during his May 2017 interview with the OPM investigator. (GE 3.) As of May 2018, he had no success in identifying the creditor. (AE H; Tr. 62-63, 110-111.) He recently filed a dispute with Credit Karma. (Tr. 111.)

Medical collection debt for \$38 (SOR ¶ 1.i)

As of January 2017, the credit bureaus were reporting that a \$38 medical debt from July 2011 was placed for collection in January 2012. (GE 3.) Applicant did not recognize the debt when he was confronted about it during his May 2017 interview with the OPM investigator. (GE 3.) As of May 2018, he had no success in identifying the creditor. (AE H; Tr. 62-63, 110-111.) He recently filed a dispute with Credit Karma. (Tr. 111.)

Medical collection debt for \$25 (SOR ¶ 1.j)

In May 2016, a \$25 medical debt was placed for collection. (GE 3.) When queried about the debt by an OPM investigator in October 2017, Applicant recognized the creditor as a medical billing company and speculated that the debt was from an emergency room visit for his child. He denied knowing of any collection activity for the debt. (GE 2.) Applicant paid the debt in mid-October 2017. (AEs C, H.)

As of January 2018, Applicant's federal student loan and his and his spouse's primary mortgage (balance \$238,039) were considered current. Their mortgage had been seriously delinquent as recently as May 2016, but it was brought up-to-date in June 2016.² They modified their home loan to lower the monthly mortgage payments to \$1,400 a month. (AE S; Tr. 56, 93-94.)

Applicant earns \$28 an hour in his current job. He works three 12-hour shifts a week and an extra four-hour shift every other week. (Tr. 67-68, 70, 80.) He requires a secret clearance because it is a condition of his employer's contract with the government. He does not access classified documentation and submits that he would be no risk to security. The job is very important to him and his family because of the income and fewer hours and less stress than working in corrections. (AE T; Tr. 65-67, 71, 75, 79, 96.) His spouse last worked outside the home in 2005. She worked as a hair stylist, and developed medical

² Applicant testified about his primary mortgage loan that he fell behind but then refinanced for a loan at a fixed rate. (Tr. 56.) The file does not indicate the date for the refinancing.

problems that caused her to stop working. In 2006, she began receiving SSDI, which has been consistent over the years. (Tr. 73-74, 82.) As of May 2018, her SSDI was \$1,320 plus \$110 for their children every month. (Tr. 69.) Applicant's take-home pay averages \$1,800 every two weeks. He has worked overtime in the past but had not had any overtime during the first five months of 2018. Any extra income is used for household bills. (Tr. 70-71, 80-81.) It took until late winter or early spring 2018 for Applicant to stabilize his finances. (Tr. 86.) He testified, without any corroborating documentation, that he and his spouse have \$1,000 to \$1,500 in discretionary income after they pay their monthly expenses, excluding groceries. When asked what he does with the discretionary income, Applicant responded, "Now lately, we've been fixing this stuff." (Tr. 112.) Applicant has not taken any vacations away from home in several years. He takes pride in maintaining his house and backyard. (Tr. 113.)

Applicant and his spouse owe the IRS approximately \$10,000 for tax year 2016 because of the disbursement of his retirement contributions by his previous employer. The IRS intercepted their tax refund for tax year 2017 and established an installment plan under which Applicant and his spouse are required to repay their tax debt at \$150 a month. (Tr. 115-117.) When asked when he made his first payment, Applicant responded, "It's gonna [sic] start. . . . So I just paid that, so next month." (Tr. 119.)

Applicant presented a character reference letter dated August 2014 from a neighbor. The neighbor described Applicant as hardworking, driven, and possessing integrity. He was dedicated to his family and offered assistance to friends and neighbors on a regular basis even while working multiple jobs. (AE F.) In June 2016, this neighbor reiterated his support for Applicant as a valuable asset to any organization. (AE K.)

Applicant's cousin attested to Applicant having good moral character and being well liked among his friends. As evidence of Applicant's kindness, she cited Applicant's care for an ill, elderly neighbor who has no local family to care for him. She described Applicant as "a stand up guy." (AE U.)

The evening supervisor at Applicant's jobsite authored a character reference letter. He described Applicant as an excellent officer, who is trustworthy and very attentive to his job duties. (AE V.)

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 is legally liable on a defaulted second mortgage for \$24,496 (SOR ¶ 1.a) and on the credit delinquencies in SOR ¶ 1.b for \$5,572 and SOR ¶ 1.d for \$4,108. The evidence also shows that he had a history of delinquency of up to 120 days at times on his federal student loan (SOR ¶ 1.e). Small medical debts for \$93 (SOR ¶ 1.g) and \$25 (SOR ¶ 1.j) were placed for collection, although it was not shown that Applicant was aware of those debts when they first came due. 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. The delinquent accounts establish disqualifying conditions AG ¶ 19(a), "inability to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations."

Applicant's spouse defaulted on another credit card (SOR ¶ 1.c), and a \$5,484 judgment was granted against her in October 2015. As an authorized user, Applicant was not contractually liable for the debt, although he admits that he used the account for household expenses. However, he has accepted responsibility in court to repay the judgment debt for his spouse. As of January 2017, Applicant had three collection debts on his credit report that he disputes: a \$231 insurance debt (SOR ¶ 1.f) in that it has been paid and two medical debts of \$38 (SOR ¶¶ 1.h and 1.i) because he has been unable to verify them.

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.

Applicant did not provide any documentation showing that he paid the insurance debt, but he provided a contact number for the collection entity that could verify a zero

balance. The \$38 medical debts were incurred in 2011 and placed for collection in 2012. The collection entities that reported the debts to the credit bureaus are not sufficiently identified on the credit report for Applicant to determine their validity. 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.³ Even if they were owed at one time, they medical debts may no longer be legally enforceable.

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 limited applicability. Some of the debts first became delinquent more than five years ago. The second mortgage was charged off in February 2011, although some payments were then made through September 2012. The credit-card account in SOR ¶ 1.b was charged off in October 2011. The \$93 medical collection debt was incurred in May 2012. 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, he had not made any recent payments to satisfy or settle the defaulted mortgage loan, despite being billed for the principal balance on a monthly

³ 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>.

basis. He asserted during his May 2017 subject interview that he paid down the \$5,752 balance on the credit account in SOR ¶ 1.b to \$3,500, but he provided no proof of any payments. The \$93 medical collection debt went unpaid until October 2017. He only recently arranged to make \$25 payments toward the \$4,108 credit-card balance (SOR ¶ 1.d) that was charged off in March 2014. His student loan was past due 120 days as recently as February 2017 to May 2017. Such recent delinquency is not mitigated under AG ¶ 20(a).

AG ¶ 20(b) has some applicability in that Applicant and his spouse's finances were stressed because of the unexpected increase in their monthly obligation on their primary mortgage. A transaction history for the mortgage shows that their monthly payment increased by \$666 in October 2007. By taking on an adjustable-rate mortgage, Applicant and his spouse knowingly incurred the risk that their monthly payment could increase substantially. Even so, they had no control over a decline in the housing market, which negatively impacted the value of their home. They were unable to refinance for a fixed-rate loan at that time because their home was worth less than the mortgage debt. Low income was also a factor. After almost 20 years on the job as a correctional officer, he earned only \$21 an hour. His spouse's SSDI was consistent, but their mortgage payment took more than half of their income. They used the credit cards in SOR ¶¶ 1.c and 1.d to pay part of their mortgage payment.

AG ¶ 20(b) requires that an individual act responsibly under the circumstances, and Applicant's evidence in that regard falls short in some aspects. When Applicant lost his job as a correctional officer in 2016, he was disbursed \$80,000 in his retirement contributions. He spent more than half of those funds on two cars and the remainder went to catch up on his primary mortgage and utility bills. Applicant is not faulted for giving priority to paying his mortgage, and he likely would have had trouble qualifying for a vehicle loan. However, he also knew that he owed delinquent debt to the creditors in SOR ¶¶ 1.b and 1.d. There is no evidence that he made any effort keep those creditors apprised of his financial status. He claimed in May 2017 that he had resolved his second mortgage by combining it with his primary mortgage in a refinancing, and he expressed his intention to send the loan documentation to the creditor to prove the debt was not delinquent. He now acknowledges that the mortgage debt was not resolved in a refinancing. He did not adequately explain the discrepancy in his accounts about resolution of that debt. Even acknowledging that it may have taken some time for him to gather all the paperwork needed to submit an application to repay the debt, he was not proactive about addressing the debt when the application to repay the debt though his primary mortgage was submitted during the week preceding his security-clearance hearing.

AG ¶¶ 20(c) and 20(d) apply to the federal student loan debt (SOR ¶ 1.e) and the medical collection debts in SOR ¶¶ 1.h and 1.j. Applicant has made \$85 monthly payments since August 2017 under terms acceptable to his student-loan servicer. He paid the medical collection debts in October 2017, albeit after he received the SOR. His very recent application to include his \$24,496 mortgage delinquency in his primary mortgage is some evidence of good faith on his part, but it would be premature to apply either AG ¶ 20(c) or AG ¶ 20(d) to that debt when no action had been taken on his application, and he had not

made any payments toward the delinquency. Applicant is not required, as a matter of law, to establish that he has satisfied each debt in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. June 5, 2006). However, he is required under Appeal Board precedent to demonstrate not only that he has a plan to resolve his financial problems, but that he has taken significant actions to implement that plan. See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. July 6, 2006.) Applicant testified that if his application to repay the debt through his primary mortgage is not approved, he plans to make \$150 monthly payments toward the debt. The Appeal Board has consistently held that a promise to pay a debt in the future is not a substitute for a track record of paying debts in a timely manner. See e.g., ISCR Case No. 09-05390 at 2 (App. Bd. Oct. 22, 2010). Some doubts persist about whether he can be counted on to make those payments. He entered into an agreement in court to repay the judgment debt (SOR ¶ 1.c) for his spouse at \$50 a month starting January 2018. He did not make the payments for January through March 2018 for the stated reason that he “just didn’t get to pay it.” He explained that his basement had been flooded with sewage around that time, and in late March or early May 2018, he had water damage in his house from a burst water pipe. Even so, he reported net household discretionary income after expenses (excluding groceries) of \$1,000 to \$1,500 of late, and so he should have been able to make a \$50 monthly payment.

Applicant has also not made sufficient progress toward resolving the credit delinquencies in SOR ¶¶ 1.b and 1.d. Regarding the \$5,572 charged-off credit account (SOR ¶ 1.b), Applicant contacted the creditor after he received the SOR, but the account had been removed from collections. In early January 2018, Applicant and his spouse asked the creditor to contact them about resolving the debt. As of May 2018, they were still awaiting repayment terms from the creditor, but there is also no evidence that they followed up on their January 2018 inquiry. Just days before his security-clearance hearing, Applicant reportedly entered into an agreement to repay the \$4,108 credit-card delinquency (SOR ¶ 1.d) at \$25 monthly. These belated efforts are not enough to satisfy either AG ¶ 20(c) or AG ¶ 20(d).

AG ¶ 20(e) has some applicability. An authorized user on his spouse’s account, Applicant was not contractually liable for repayment of the charged-off delinquency in SOR ¶ 1.c. It is not considered for disqualifying purposes, and in that regard AG ¶ 20(e) applies to the debt. Even so, the debt is relevant in mitigation. Applicant’s reason for the delay in commencing his repayment of the judgment debt for his spouse, that he “just didn’t get to pay it,” raises doubt that he will make consistent payments to resolve the charged-off debts in SOR ¶¶ 1.a, 1.b, and 1.d. Applicant did not provide any documentation showing that the medical collection debts in SOR ¶¶ 1.h and 1.i are not his debts. However, Applicant cannot reasonably be expected to pay a debt that is not sufficiently identified for him to determine its validity.

Applicant testified that his financial situation has only recently stabilized to enable some payments toward his delinquencies. In his favor, there is no evidence that he is continuing to take on new credit debt that could compromise his finances in the future. He is able to pay his current bills. However, he has not yet demonstrated a track record of timely repayment on his financial obligations to enable a predicative judgment that his

financial problems are safely behind him. He owes the IRS \$10,000 for tax year 2016 that he has agreed to repay at \$150 a month. Whether it be medical expenses, burst water pipes, or sewage issues, something has always come up that has diverted his attention from his finances. More progress is needed toward reestablishing financial stability to fully mitigate the financial considerations security concerns.

Guideline E: Personal Conduct

The security concern about personal conduct is articulated in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigations or adjudicative processes.

Applicant completed and certified to the accuracy of an e-QIP in October 2016 on which he responded negatively to the financial record inquiries concerning any delinquency on routine accounts in the last seven years. Available credit information establishes that he was contractually liable for three accounts that were charged off within seven years of his e-QIP. The second mortgage was charged off for \$24,496 in March 2015. The credit account for dental services was charged off for \$5,752 in October 2011. A credit card used for household expenses and to help pay his mortgage was charged off for \$4,108 in March 2014. A reasonable inference of deliberate falsification of his e-QIP could be drawn because of these debts. Assuming that Applicant held a good-faith but mistaken belief that the delinquency on the second mortgage had been resolved in a refinancing of his primary mortgage, he recalled during his interview in May 2017 that the debt in SOR ¶ 1.b had been placed for collection, and that he had stopped making payments on the debt in SOR ¶ 1.d in approximately 2009 when his monthly mortgage obligation increased. He did not dispute that both debts should have been listed on his e-QIP. He told the OPM investigator that he did not list the debts "in error." Nonetheless, Applicant denies any intentional concealment and cites stress, the lack of notice and opportunity to complete the form, and lack of information to complete the e-QIP accurately.

The DOHA Appeal Board has explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E

and the burden of persuasion had shifted to the applicant to present evidence to explain the omission. ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).

The delinquency dates for the accounts are sufficient to shift the burden to Applicant to explain his inaccurate denial to the e-QIP queries concerning any delinquency involving routine accounts. Applicant presented evidence showing that, when he was told to report for training, he was not advised that he would be required to complete the e-QIP or that he should bring financial record information. He was given one night while he was staying in a hotel to complete the form. When he was interviewed in May 2017, he responded affirmatively when asked whether he had any delinquent accounts, and he disclosed the debt in SOR ¶ 1.b, which he believed he had paid down to \$3,500. He did not disclose the debt in SOR ¶ 1.d before confrontation. His explanation is that he did not recall the debt before he was asked about it. The evidence falls short of establishing intentional concealment needed under AG ¶ 16(a), which does not apply when omissions are due to mistake, lack of recall, or other reason negating willful intent. AG ¶ 16(a) provides:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Viewing the record as a whole, Applicant exhibited a lack of knowledge of the details of his financial accounts, which primarily raises concerns about his financial judgment. The personal conduct security concerns related to deliberate falsification are not sufficiently proven.

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 analyses under Guideline F and Guideline E are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, 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 has favorable character references from a neighbor, a friend, and a shift supervisor at work. He repeatedly expressed the importance to him and his family of his job. In addition to the increase in his income over his previous employment, it has improved his family life because he has felt less stress and has had more time to spend with his family. The Appeal Board has held that the impact of an unfavorable decision on an applicant is not a relevant consideration in determining his or her eligibility for a security clearance. See, e.g., ISCR Case No. 09-07563 (App. Bd. Dec. 13, 2011).

Applicant was on notice as of May 2017 that the adverse credit information was of concern to the DOD. He was not sufficiently proactive in contacting his creditors to verify his debts and arrange repayment terms. 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). At some future date, Applicant may be able to show a track record of consistent, timely payments toward his debts that would provide sufficient guarantee that he can be counted on to comply with his obligations. For the reasons noted, I am unable to find that it is clearly consistent with the national interest to grant Applicant a 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
Subparagraph 1.d:	Against Applicant
Subparagraphs 1.e-1.j:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	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