



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



In the matter of:)
)
) ISCR Case No. 17-04199
)
Applicant for Security Clearance)

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: Thomas Albin, Esq.

09/04/2018

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant defaulted on several consumer credit accounts because of lack of income. He made small payments on some of his past-due debts from July 2017 to January 2018, when he lost his job with a defense contractor because of a lack of security clearance. He has yet to fully mitigate the concerns about his financial judgment. Clearance is denied.

Statement of the Case

On January 16, 2018, 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 responded to the SOR on January 26, 2018, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On February 20, 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 February 27, 2018, I scheduled a hearing for March 21, 2018.

At the hearing, five Government exhibits (GEs 1-5) were admitted. A February 14, 2018 letter forwarding the proposed GEs to Applicant's counsel and a list of the GEs were marked as hearing exhibits (HEs I-II) for the record but not admitted in evidence. On the Government's motion and without objection from Applicant, SOR ¶ 1.i under Guideline F and the Guideline E allegations (SOR ¶¶ 2.a and 2.b) were withdrawn. Three Applicant exhibits (AEs A-C) were admitted in evidence. Applicant and his spouse testified, as reflected in a transcript (Tr.) received on March 30, 2018.

I held the record open for two weeks for post-hearing submissions from Applicant. No documents were received by the deadline, so the record closed on April 4, 2018.

Summary of SOR Allegations

The SOR as amended alleges under Guideline F that, as of January 16, 2018, Applicant owed charged-off credit card debt totaling \$17,116 (SOR ¶¶ 1.a, 1.b, and 1.d); credit card collection debt totaling \$6,991 (SOR ¶¶ 1.c, 1.e, and 1.g); a \$1,765 wireless telephone debt in collection (SOR ¶ 1.f); a \$296 medical debt in collection (SOR ¶ 1.h); and two financial judgments from 2015 for \$2,104 (SOR ¶ 1.j) and \$7,489 (SOR ¶ 1.k). When Applicant responded to the SOR, Applicant denied only two debts: the wireless telephone debt (SOR ¶ 1.f) and the medical debt (SOR ¶ 1.h), both of which he was disputing. Applicant denied that the account in SOR ¶ 1.a (\$10,100) had been charged off. He indicated that he was making monthly payments on that debt and on the debts in SOR ¶¶ 1.c (\$3,965), 1.g (\$728), 1.j (\$2,104 judgment), and 1.k (\$7,489 judgment). (Answer.)

Findings of Fact

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

Applicant is 53 years old and a high school graduate. (Tr. 16.) He and his spouse married in 2000. They have three children.¹ Applicant owned and operated an auto sales business for about 15 years until September 2005. He sold the business to care for his wife, who had been injured in a car accident in 2005. (GE 1, Tr. 95.) She returned to work in the mutual funds industry within weeks of her surgery (Tr. 76), but Applicant was

¹ On his SF 86, Applicant listed a biological son, now age 17, and two adopted daughters, now ages 15 and 21. (GE 1; Tr. 29.) The daughters' surname is the same as his spouse's maiden name. (GE 1.)

unemployed for over a year. (GE 1.) Unbeknownst to Applicant at the time, his spouse began gambling at a local casino in 2005. (99, 102.)

In January 2007, Applicant purchased a vehicle towing business. (GE 1; Tr. 19.) He later learned that the company had a lawsuit pending against it from an accident caused by the previous owner's son. Applicant spent about two years in arbitration. He states that he did not make much money in the towing business, but he had a towing contract with the local police. (GE 1; Tr. 50.)

In April 2008, Applicant purchased a home for his family, obtaining a mortgage loan for \$130,050. (GEs 2-4.) His spouse had a motor vehicle accident in 2008. (Tr. 77.) In January 2010, Applicant sold the towing business after his contract with the local police was not renewed. (GE 1; Tr. 29-30.) Applicant had no employment income from January 2010 until October 2016. In late 2010, his spouse needed additional surgery after being rear-ended a third time. (Tr. 96-97.) In contrast to her previous surgeries, where she was able to return to work within weeks, she had debilitating pain. She developed an addiction to opiate medication.² (Tr. 78-79, 100-101.)

In January 2011, the IRS filed a \$20,269 tax lien against Applicant and his spouse for unpaid taxes for tax year 2007. (GE 3.) His spouse had taken a premature withdrawal of her 401(k) assets, in part to fund her gambling. (Tr. 71, 102.) They filed an amended tax return for 2007 and paid the tax debt in December 2011.³ (GE 3; Tr. 103.) In September 2011, Applicant's sister died unexpectedly in a car accident. Applicant's parents provided a home for his sister's children, who were then ages 17, 19, and 20, but Applicant and his spouse helped the children financially. (GE 1; Tr. 22-23, 82.)

In March 2012, Applicant's parents purchased a two-family property, obtaining a mortgage for approximately \$100,000.⁴ The plan was to provide a home for their grandchildren who had lost their mother and obtain a renter for the other unit. Applicant relied on his personal credit cards to pay for renovations and refurbishing the property. (Tr. 49, 83.) He completed the renovation work himself, which took him over a year. His father died within the next year or so, and his mother inherited the property. The property has had tenants on and off. The present rent is \$1,800 a month. (Tr. 31-32, 37.) Apart from

² Applicant's spouse began taking a prescribed narcotic in 2008. Her physician switched her to oxycodone and increased her dosages. Eventually, he prescribed 12-hour release Oxycontin. She was slowly weaned off opiates under the care of a physician from 2013 to 2015. (Tr. 100-101.)

³ Neither Applicant nor his spouse had employment income at the time, although Applicant's spouse had some settlement money from her accidents. There is no explanation in the record for the source of the tax payment.

⁴ Applicant indicated on his SF 86 that he has "acted as Property Manager/Owner" since 2012. (GE 1.) When he was interviewed in February 2017, he explained that he did not own the property but instead manages it for his mother. (GE 5.) At his hearing, he responded affirmatively when asked to confirm that he bought the property in March 2012 and that he has been renting it out for the past five years. After paying the mortgage at approximately \$600 a month, property taxes, and expenses, the remaining rental income is \$500 a month if the property is fully rented. (Tr. 33-34.) There is no open mortgage on Applicant's credit reports for the property. It appears that his mother makes the mortgage payment. Applicant subsequently confirmed that the rental property belongs to his mother, and she receives the rental income. (Tr. 49-50.)

managing the property part time for his mother, Applicant had no other employment. (GE 1.)

Applicant's spouse received settlements from her three car accidents totaling approximately \$117,000.⁵ (Tr. 97.) Applicant bought a 2007 model-year car for \$27,000 cash in 2012. They paid for their son's expenses playing baseball and some household bills. They also put some of the money into remodeling the house his parents bought. His spouse also gambled away some of the money. (GE 5; Tr. 35-36, 81, 98.) She played poker at a local casino from 2005 to 2012 and hid her gambling with \$3,000 to \$6,000 of household income per month from Applicant. (Tr. 99-100.) After Applicant learned about the IRS tax lien, she admitted to him that she was addicted to pain medication and had been gambling. Facing divorce and not wanting to break up the family, she stopped gambling in 2012. (Tr. 102.)

Applicant and his spouse twice considered filing for bankruptcy but wanted to pay their debts. When Applicant filled out his application to work for a defense contractor in 2016, they heard that "you can't have a bankruptcy on your record," so they decided against filing. (Tr. 84-85.)

On July 27, 2016, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86) incorporated within an e-QIP. Concerning any financial delinquency involving enforcement in the last seven years, Applicant listed the federal tax lien that was repaid (allegation withdrawn). He listed no other delinquencies involving enforcement, and responded "No" to whether he had a judgment entered against him in the last seven years. Concerning delinquencies involving routine accounts, Applicant listed one debt: a \$9,000 state tax delinquency from 2005 that he was reportedly repaying at \$50 a month (not alleged). Applicant responded negatively to inquiries concerning any other 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 accounts or credit cards suspended, charged off, or cancelled for failing to pay as agreed in the last seven years.⁶ (GE 1.)

A check of Applicant's credit on August 27, 2016, revealed two unpaid judgment debts for \$7,489 from July 2015 (SOR ¶ 1.k) and \$2,104 from October 2015 (SOR ¶ 1.j); a charged-off credit card debt for \$12,311 (SOR ¶ 1.a); and six collection debts totaling \$14,165 (SOR ¶¶ 1.b-1.d and 1.f-1.h). (GE 2.)

After four years with no employment other than managing his mother's rental property, Applicant began working as an outside machinist for a defense contractor in

⁵ Applicant apparently had a cash-out of \$47,100 from his credit union account. He indicated that it was from his spouse's insurance settlement (GE 5), which she recalls receiving in 2012. (Tr. 81.)

⁶ The Government's withdrawal of the personal conduct allegations removes falsification as a potentially disqualifying concern. What Applicant knew about his finances remains an issue because of its implications for his current and future financial management and financial judgment.

October 2016 after two weeks of paid training in September 2016. (GEs 1, 5; Tr. 17.) His starting hourly wage was just over \$17 an hour. (Tr. 20.)

On February 28, 2017, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). Applicant was asked whether he had any debts over 120 days overdue or in collection within the last seven years that had not been listed on his SF 86. He responded negatively and was then confronted with the adverse credit information on his record. Applicant did not dispute the delinquencies, but he was unable to provide any details about the debts. He indicated that his spouse was aware of them and that they were making payments. He attributed his financial difficulties to his periods of unemployment and his spouse having had multiple car accidents and surgeries. He denied that any of the financial issues were due to gambling or alcohol. Applicant described his finances as improving now that he had income from his defense-contractor employment. (GE 5.)

As of June 26, 2017, Equifax was reporting that Applicant's home loan had been modified under a federal government program in September 2015. His home mortgage had been delinquent throughout the fall of 2014. (GE 4.) The delinquency and payment histories for the accounts in the SOR are as follows:

Charged-off debt for \$10,100 (SOR ¶ 1.a)

Applicant's credit card account, opened in February 1992, was charged off for \$12,311 in June 2014 after becoming delinquent in September 2012. (GE 2.) The card was used to remodel the home for his parents. (Tr. 81-82.) As of May 2017, the account was past due for \$10,100. (GE 3.) Applicant was brought to court over the debt, and he agreed to garnishment of his wages at \$75 a week. His wages were garnished throughout 2017.⁷ (GE 4; AE A; Tr. 27, 41, 59.) The garnishment stopped because he lost his job with the defense contractor. As of January 2018, Equifax was reporting a past-due balance of \$7,925. (GE 4.) Applicant made no payments on his own after garnishment stopped. (Tr. 41-42.) His spouse testified that when he became unemployed, she contacted the collection agency to renegotiate the terms of repayment. Applicant and his spouse are waiting for a decision on his security clearance eligibility before resuming payments. (Tr. 58-59.)

Charged-off debt for \$4,688 (SOR ¶ 1.b)

Applicant's credit card account, opened in September 2006, became delinquent in April 2013. It went into collections in August 2013 before being charged off for \$4,701. (GEs 2, 4.) One payment was made in December 2016 to reduce the past-due balance to \$4,688. (GEs 3, 4.) As of January 2018, Appellant and his spouse were attempting to negotiate a payoff of his debt. (Tr. 42.) The creditor agreed to settle for \$2,600, but they have been unable to commit to the payment without knowing whether Applicant would regain his job with the defense contractor. (Tr. 62, 111.)

⁷ As of the week ending November 25, 2017, \$3,787 had been garnished from his wages in 2017. (AE A.) At \$75 a week, the garnishment would have started before his February 28, 2017 interview.

Collection debt for \$3,965 (SOR ¶ 1.c)

A credit card account, opened in December 2010, became delinquent in April 2013. It was charged off for \$3,114 in November 2013, and then placed for collection for \$3,841 in June 2015. As of June 2017, the past-due balance was \$3,965. (GEs 2, 3.) Applicant's spouse testified that neither she nor Applicant can recall opening the account, which was obtained in Applicant's name. They disputed the debt on that basis, but they began repaying the debt. (GE 4; Tr. 63.) As of February 2018, the account had a past-due balance of \$3,765. (GE 4.)

Charged-off debt for \$2,328 (SOR ¶ 1.d)

Applicant opened a credit card account in January 2012 with a home-furnishings retailer. His account was charged off and closed by the creditor in June 2013 with a past-due balance of \$2,328 after inactivity since May 2013. (GEs 2-4.) Applicant's spouse testified that the account has been closed and that the creditor was going to send a 1099-C (Cancellation of Debt) form to them. (Tr. 63-64.) No 1099-C form was submitted into the record either during or after the hearing.

Collection debt for \$2,244 (SOR ¶ 1.e, possibly the judgment in SOR ¶ 1.i)

In April 2014, Applicant's credit card account with a retailer was assigned for collection for \$2,105 after inactivity since February 2013. In October 2015, the collection entity (collection agency X) obtained a judgment for \$2,104, which appears to be for the debt in SOR ¶ 1.e.⁸ As of June 2017, collection agency X was reporting a collection balance of \$2,244 on the debt. (GEs 2-3.) As of February 2018, Equifax was reporting a past-due balance of \$2,004 on the account in SOR ¶ 1.e with a date of last payment in January 2018. (GE 4.)

Collection debt for \$1,765 (SOR ¶ 1.f)

In April 2015, a wireless phone service placed a \$1,765 balance from May 2013 for collection. (GE 2.) As of June 2017, the debt had not been paid. (GE 3.) Applicant disputed his liability (Answer), and the debt was no longer on his credit record as of February 2018. (GE 4.) Applicant's spouse testified that her sister applied for wireless phone service in her name without her knowledge. (Tr. 67-68.) Neither Applicant nor his spouse have filed a report with the police of identity theft because they have yet to see the result of their verification request with the creditor. (Tr. 116.)

Collection debt for \$782 (SOR ¶ 1.g)

Applicant bought some merchandise on credit from a mail order company in December 2012. When his account became six months past due in October 2013, it was placed for collection for \$782. (GEs 2-4.) Applicant's spouse testified that \$25 monthly

⁸ The high credit on the account in collection was \$2,105. The collection entity obtained a \$2,104 judgment in October 2015.

payments went toward that debt (Tr. 69), although Equifax was not showing any progress toward resolving that debt as of February 2018. (GE 4.)

Medical collection debt for \$296 (SOR ¶ 1.h)

In February 2016, a \$296 medical debt from July 2010 was placed for collection. (GE 2.) Applicant initially disputed the debt, believing that insurance should have covered it. He and his spouse later learned that he had incurred the debt during a gap in his insurance coverage. (Tr. 69.) Applicant's spouse testified that the debt has been paid. (Tr. 70.) Applicant provided no documentation in that regard, but the debt was no longer on his credit report as of June 2017. (GE 3.)

Judgment debt for \$7,489 (SOR ¶ 1.k)

In April 2014, Applicant's credit card with a home improvement retailer went to collections with a balance of \$7,490. In July 2015, the collection entity obtained a \$7,489 judgment. (GEs 2-4.) Available copies of money orders show that Applicant paid a collection entity \$50 on December 14, 2017, and on January 16, 2018. (AE B.) After a payment in January 2018, Applicant owed a past-due balance of \$7,439. (GE 4.) Applicant's spouse made another \$50 payment on February 8, 2018. (AE B.)

Applicant's spouse testified that she made monthly payments of \$25 each on four delinquent accounts held by a collection law firm. (Tr. 72.) Available money orders show separate payments of \$25 each on three accounts on January 5, 2017, June 14, 2017, July 17, 2017, and August 12, 2017; a \$150 payment covering three accounts on October 6, 2017 (apparently covering a missed September payment and the October 2017 payment); a single \$75 payment on November 11, 2017; three \$25 payments on December 14, 2017; and three \$25 payments on January 16, 2018. (AE B.) The payments were likely toward the debts in SOR ¶¶ 1.c and 1.e, given Applicant's credit report showed a last payment on those accounts in January 2018, and possibly 1.g, based on his spouse's testimony.⁹ Payments toward the debt in SOR ¶ 1.k were to a different collection entity. (AE B.)

Applicant regularly worked overtime for the defense contractor because he had bills to pay. He had only two days off between October 2016 and January 2018, when he was walked off the job because of the issuance of the SOR. (Tr. 18, 25, 38.) He was paid time and a half on Saturdays and double time on Sundays. (Tr. 38.) He received three pay increases while at the defense contractor, including a raise to a base pay of \$21.79 an hour just before he lost his job. (Tr. 20-21.) He is subject to recall if his clearance is adjudicated favorably. (Tr. 25-26.) As of March 2018, Applicant had unemployment income of \$643 a week. (Tr. 26-27.) He had about \$800 in his checking account and only \$25 in savings. He has a 401(k) account with \$2,000 to \$3,000 on deposit. (Tr. 44.) By the time

⁹ The account and file numbers on the money orders differ from the account numbers on Applicant's credit report and are likely the numbers assigned by the collection attorney. The payment amounts indicate three debts were being repaid on a monthly basis. The payments may pertain to four SOR allegations, however, if the judgment in SOR ¶ 1.j is a duplicate listing of SOR ¶ 1.e.

the household expenses are paid, he and his spouse have little to nothing left over each month. (Tr. 45.) Applicant's spouse has not worked since 2010 or 2011, although she had social security disability income of \$1,700 a month from at least 2013 through 2015.¹⁰ (Tr. 76-77, 108.) They need his income to make payments on his past-due debts. (Tr. 85.) His spouse is looking for work. (Tr. 109.) Neither Applicant nor his spouse has not had any financial counseling. (Tr. 51, 117.)

Applicant and his spouse have had marital difficulties since 2011 or 2012. She was unable to explain how Applicant spent his time because they have not seen each other much since he learned about her drug addiction and gambling. They have not divorced and continue to live in the same house for the sake of the children since 2011 or 2012, but he lives on the lower level. (Tr. 107.) She continues to handle the household finances. (Tr. 43, 55.) The older of Applicant's and his spouse's two daughters is in college. She apparently finished high school early and works two part-time jobs while going to school. Their son and younger daughter live at home. (Tr. 94.) Applicant bought a 2006 model-year vehicle for \$3,000 cash for his son but no other large purchases or vacations in the last three years. (Tr. 45, 117.) He has opened no new credit card accounts. (GE 4.)

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

¹⁰ Applicant's spouse testified that she applied for social security disability in 2010, but lost her disability because she stopped going to the doctor. (Tr. 78.) She apparently reapplied for disability income, given her subsequent testimony that she received social security disability income of \$1,700 per month for three years until 2016. (Tr. 108.)

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 defaulted on seven credit card debts totaling approximately \$32,831. Two of the debts, a credit card collection debt of \$7,489 (SOR ¶ 1.k) and a charged-off credit card debt of \$2,104 (SOR ¶ 1.e, likely duplicated in SOR ¶ 1.j) went to judgment. Additionally, a \$296 medical debt from July 2010 was placed for collection. As of June 2017, a wireless telephone collection debt of \$1,765 from May 2013 was still on his credit record. When he answered the SOR in January 2018, Applicant acknowledged his legal liability for all but the wireless phone debt and the medical debt. At his hearing, he was apparently no longer disputing the medical debt because it had been incurred by him during a lapse in his insurance coverage. However, although they had made some payments toward the delinquent credit card account in SOR ¶ 1.c, neither he nor his spouse recalled him opening the account. His spouse testified to her belief the cell phone account was opened fraudulently in her name by her sister, but that would not explain why it was reported on Applicant's credit record.

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 or his spouse on his behalf had asked the cell phone provider to validate the debt. Equifax was no longer reporting the debt on his credit record as of February 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.¹¹ 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. Even assuming that the debt was erroneously reported on Applicant's credit, the evidence of consumer credit card delinquency is sufficient to establish disqualifying conditions AG ¶¶ 19(a), "inability to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations."

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

¹¹ 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>.

(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 most of the credit card debts became seriously delinquent in 2013. The medical debt from 2010 was not paid because Applicant and his spouse mistakenly assumed that it should have been covered by insurance. 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 March 2018, only the medical debt had been paid. AG ¶ 20(a) does not fully apply because most of his delinquent debts have not been resolved.

Applicant has a case for some mitigation under AG ¶ 20(b). Applicant's financial delinquencies were caused by a combination of circumstances, some of which were not within his control. His spouse started gambling in 2005 without his knowledge. She had employment income, but also withdrew 401(k) assets to fund her gambling in 2007, which led to an unexpected significant tax lien filed in January 2011. His spouse's third car accident, which occurred in 2010, had a negative impact on their finances because she was unable to return to work. Then, in September 2011, Applicant's sister unexpectedly died in a car accident. Applicant and his spouse provided some financial support for his sister's children even though he was unemployed.

Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside of his control, I have to consider whether Applicant acted in a reasonable manner when dealing with his financial difficulties. See ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May

25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether Applicant maintained contact with his creditors and attempted to negotiate partial payments to keep debts current. Despite learning about his spouse's gambling and opiate addiction in 2011 or 2012, Applicant did not take over handling the household finances from his spouse. Applicant knowingly incurred much of his credit card debt in remodeling the house that his parents purchased in March 2012. He may not have known about the details of his accounts, but he had enough reason to question whether his spouse was paying them, given her admitted gambling problem and his lack of any employment income. It cannot be determined that he acted fully responsibly toward his creditors without some proof that he made reasonable efforts to keep himself apprised of his financial obligations. Applicant was unable or unwilling to provide details about his debts during his subject interview in February 2017. Some doubt about his financial judgment also arises because he gave priority to purchasing a car for \$3,000 for his son (now 17 years old) without ensuring that his own credit obligations were being repaid.

Applicant is credited with working almost every day from October 2016 until January 2018 for the income needed to support his family and address his past-due debts. Applicant presented evidence of wage garnishment at \$75 a week, which went toward the debt in SOR ¶ 1.a. Available credit reports show that the \$12,311 charged-off balance had been reduced to \$7,925 as of the last garnishment of his wages in December 2017. The repayment through garnishment is not considered completely voluntary because Applicant agreed to it in response to court action from the creditor, but it is evidence showing that the debt was in the process of being resolved under AG ¶ 20(c) until Applicant lost his job. AG ¶ 20(c) and ¶ 20(d) have some applicability because of the payments at \$75 a month from June 2017 to January 2018 toward three other delinquent credit card debts, and his apparent satisfaction of the \$296 medical debt. Those efforts at repayment commenced six months before the issuance of the SOR, although after Applicant had been interviewed by the OPM investigator and was on notice that his delinquent accounts were of concern to the DOD. Applicant presented no evidence of any payments on the judgment debt in SOR ¶ 1.k before December 14, 2017. He did not provide an explanation that could reasonably justify the delay in addressing that debt. He had made only one payment, in December 2016, toward the charged-off debt in SOR ¶ 1.b and no payments toward the charged-off debt in SOR ¶ 1.d. Applicant did not provide a record of consistent repayment to apply AG ¶ 20(c) or AG ¶ 20(d) to those debts. Applicant has not had the financial counseling contemplated within AG ¶ 20(c).

Applicant is not required to pay off every one of his past-due debts before he can be granted security clearance eligibility. Yet, he is in a difficult situation financially in that his unemployment compensation does not provide him the income to continue to make payments on his delinquencies. Due to interest on unpaid balances, he owed more than \$28,000 in past-due credit card debt as of March 2018. He has not presented the documentation required under AG ¶ 20(e) to disprove his liability for the wireless telephone debt or the credit card debt in SOR ¶ 1.c. AG ¶ 20(e) may have some limited applicability in that the judgment in SOR ¶ 1.j is likely the same debt as the credit card debt in SOR ¶ 1.e. While his monthly payments on some debts from June 2017 to January 2018 suggest that

he will resume his payments on those debts if he had the income to do so, little progress had been made toward his other debts. He has yet to demonstrate that he can handle his finances fully responsibly.

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). It is not a proceeding designed to collect debts. However, Applicant raised doubts about his financial judgment and willingness to comply with his obligations by not keeping himself adequately apprised of his delinquencies. The Government chose to not pursue the issue of whether Applicant deliberately falsified his SF 86. Applicant may not have known the details of his consumer credit delinquencies as of his interview in February 2017, but he knew or should have known that his wages were being garnished at \$75 a week to repay his largest credit card delinquency. It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). Applicant's evidence falls short of dispelling the security concerns raised by his inattention to or disregard of his financial matters.

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.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	Withdrawn
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	Against Applicant
Paragraph 2, Guideline E:	WITHDRAWN
Subparagraphs 2.a-2.b:	Withdrawn

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