



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



In the matter of:)
)
 [Name Redacted]) ISCR Case No. 18-02264
)
 Applicant for Security Clearance)

Appearances

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

04/17/2019

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant and his spouse filed a Chapter 7 bankruptcy petition in February 2019 seeking a discharge of most of their debt exceeding \$1.2 million, including approximately \$40,000 in defaulted credit-card and loan debt. Serious medical issues for Applicant’s spouse and daughter have strained their household finances since 2010, but it is too soon to conclude that Applicant’s financial problems are safely in the past. Clearance is denied.

Statement of the Case

On October 5, 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. 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 November 13, 2018, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On January 8, 2019, 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 January 15, 2019, I scheduled a hearing for February 14, 2019.

At the hearing, four Government exhibits (GEs 1-4) were admitted. A December 26, 2018 letter (HE 1) forwarding the proposed GEs to Applicant and a list of the GEs (HE II) were marked as hearing exhibits (HE) for the record but not admitted in evidence. Thirteen Applicant exhibits (AEs A-M) were admitted in evidence. AE E, part of a February 2019 credit report, was admitted over the Government's objections. Applicant and his spouse testified, as reflected in a transcript (Tr.) received on February 27, 2019.

Summary of SOR Allegations

The SOR alleges under Guideline F that, as of October 5, 2018, Applicant owed charged-off debts of \$9,842 (SOR ¶ 1.a); \$4,333 (SOR ¶ 1.b); \$2,026 (SOR ¶ 1.d); \$934 (SOR ¶ 1.f); \$560 (SOR ¶ 1.g); \$3,384 (SOR ¶ 1.i); and \$2,785 (SOR ¶ 1.j). Applicant was alleged to owe collection debts of \$3,598 (SOR ¶ 1.c); \$1,542 (SOR ¶ 1.e); \$229 (SOR ¶ 1.h); \$2,336 (SOR ¶ 1.k); and \$319 (SOR 1.l). When Applicant responded to the SOR, he admitted the debts in SOR ¶¶ 1.a-1.d, 1.g, 1.i-1.j, and 1.l. He denied the debts in SOR ¶¶ 1.e, 1.f, 1.h, and 1.k, contending that the debts in SOR ¶¶ 1.h and 1.k are the same debt. At his hearing, he indicated that he was no longer denying the debts in SOR ¶¶ 1.h and 1.k. In his Answer, Applicant explained that his spouse is currently on disability because of a chronic illness, and that he and his spouse have retained an attorney to assist them with a bankruptcy filing. (Answer.)

Findings of Fact

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

Applicant is a 49-year-old high school graduate who retired from the U.S. military in late August 2016 after over 24 years of active-duty service. He served honorably and achieved the rank of chief petty officer. He has worked for a defense contractor as a uniformed protection officer since August 2016. (GE 1; AEs J-K.) Applicant was granted a secret clearance in July 2014. (GE 4; AE K.) His employer has requested that he obtain a top secret clearance. (Tr. 109.)

Applicant and his spouse have been married since March 1994, although they have been together longer. (GE 1; Tr. 45.) They have two daughters, ages 24 and 27. Applicant adopted his older daughter when she was three years old. (Tr. 111.)

Applicant directly supported Operation Enduring Freedom, and he was awarded several decorations and medals for meritorious military service. (AE J.) Because of his various military deployments, including 21 months in Southwest Asia,¹ his spouse handled their household finances with little oversight from him. (Tr. 103-105, 117-118.) Applicant's spouse worked as a laboratory technician part time, earning \$30,000 a year before July 2007. (GE 1; Tr. 55.) In 2008, she was diagnosed with cancer. When her illness went into remission, she worked in the healthcare industry earning \$40,000 a year. In 2010, Applicant and his spouse's younger daughter was diagnosed with bone marrow failure, which was treated with a very expensive medication.² (AEs A-B; Tr. 30, 53.) TRICARE covered some of her medical expenses at 80%, and for about one year, Applicant's spouse had a second insurance through her employer. She lost the insurance coverage when she became a per-diem employee so that she could care for their daughter. (Tr. 47-48.)

In 2012, Applicant's spouse stopped working after she was injured at work. (GE 4; Tr. 56.) In July 2012, Applicant purchased a 2008 model-year vehicle, obtaining a six-year loan of \$25,350 (SOR ¶ 1.a). His monthly car payments were \$594. Applicant's spouse made the car payments on time for a couple of years, despite mounting medical expenses. (GE 2.)

Applicant's spouse testified that she and Applicant paid about \$130,000 to \$140,000 out-of-pocket for their daughter's medical care over the years, including about \$3,200 a month for approximately nine months from 2012 to 2013 for a medication when their daughter, then age 18, was pregnant. (Tr. 30-32, 53.) Applicant did not present documentation showing those payments. He submitted records for their daughter's care in 2013 which show that claims totaling \$1,096,086 were submitted to TRICARE for her chemotherapy from January 15, 2013, to August 15, 2013.³ (AE A.) Separate hospital billing records for their daughter show expenses of \$193,578 incurred between January 2, 2013, and July 18, 2013, that were paid by TRICARE or written off as "other govt. allowance." (AE B.) However, approximately \$1,097,394 owed to a cancer institute for their daughter's care went unpaid.⁴ (AE I.)

¹ Applicant did not detail his deployments. His SF 86 indicates that he was in Southwest Asia from June 2006 to June 2007. (GE 1.) He was apparently deployed to Kuwait from May 2009 to February 2010. (GE 2.) His DD 214 indicates that he received the Iraq Campaign Medal and that he served one year and nine months in Iraq. (AE J.)

² Applicant's spouse testified that she went into remission in 2010 and that "almost to the day that [she] was in remission," their daughter was diagnosed with bone marrow failure; that their insurance did not then cover the treatments; and that she and Applicant paid about \$130,000 to \$140,000 out-of-pocket for their daughter's care. (Tr. 30.) According to a Chapter 7 bankruptcy filing, the debt to the cancer institute was incurred in December 2010. (AE I.)

³ Applicant's daughter married her child's father in January 2013. (GE 1.) Available custody records indicate that her husband was "often at sea." (AE C.) He was apparently in the military. Neither Applicant nor his spouse explained why they continued to pay medical expenses for their daughter after her marriage, although there is no evidence that their daughter had insurance coverage other than TRICARE through Applicant.

⁴ Applicant did not submit any medical records from the cancer institute. The TRICARE claims in AE A could be for care at the cancer institute, although they do not name the provider of care. She was treated with

Applicant's daughter gave birth to a daughter in April 2013, and in 2014, she lost temporary custody of her child to her parents. She had serious drug addiction issues, and her husband was often at sea. In December 2014, Applicant and his spouse were granted legal permanent custody of their granddaughter. Their daughter had relapsed into drug abuse after attending an intensive drug-rehabilitation program. (GE 1; AE C; Tr. 34, 122.) In February 2016, the court denied a motion to terminate Applicant and his spouse's guardianship of their granddaughter. (AE C.) As of February 2019, Applicant and his spouse want to adopt their grandchild, but the father will not give up his parental rights. (Tr. 46-47, 123.)

In March 2014, Applicant's spouse was diagnosed with a terminal illness, and given a life expectancy of three to five years. (Tr. 33, 45.) In December 2016, she became eligible for hospital insurance under Medicare. In June 2017, she was granted Social Security disability status, and she became eligible for Medicare medical insurance. She received a lump-sum payment of \$20,458 in retroactive disability income, and began receiving monthly Social Security Disability income (SSDI) of \$554 a month. (AE D; Tr. 56-58.) The lump-sum disability payment went to repair a vehicle and to catch up on some household bills. (Tr. 57.)

Applicant continued to perform his military duties with professionalism despite his difficult family circumstances. His enlisted performance evaluation for 2015 indicates he had his superior's highest recommendation for advancement. Applicant was considered the "ideal ambassador" for military bearing and rated as excellent in several competencies. (AE L.) Applicant went on terminal leave from the U.S. military in June 2016. (AE J; Tr. 104-106.)

Applicant began working for his defense-contractor employer in August 2016. On September 4, 2016, he completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86) on which he disclosed one delinquency involving routine accounts. He indicated that he owed approximately \$3,000 on a loan for a vehicle that was voluntarily repossessed (SOR ¶ 1.a). He explained that the debt was incurred because of his spouse's and his daughter's medical issues. He indicated that the creditor was willing to settle the debt for a lump sum and that his spouse would be receiving a settlement that would be used to pay off their debts so that they would be debt free by the end of the year. (GE 1.)

A check of Applicant's credit on September 29, 2016, revealed that the creditor listed on his SF 86 had charged off his auto loan for \$9,842 in July 2015 (SOR ¶ 1.a). Moreover, he owed several other past-due debts. A utility provider had charged off his account for \$3,384 in December 2011 (SOR ¶ 1.i). Equifax and Experian reported a payday loan obtained in December 2012 had been charged off for \$2,917 in January 2016 (SOR ¶ 1.b). Trans Union reported that the creditor had charged off a note loan obtained in December 2012 for \$2,785 (SOR ¶ 1.j). Dates of last activity for both credit entries was May 2015, so they could be the same debt. A credit-card account opened in October 2015

eculizumab, which is a very expensive chemotherapy drug. The TRICARE records show only the charges and not what TRICARE paid, if anything. Their daughter was listed as an established patient at that time. (AE A.)

(SOR ¶ 1.f) was in collection for \$934 due to inactivity since June 2016. Applicant owed \$516 on another credit card with the creditor that was suspended because it was 90 days past due (SOR ¶ 1.g).⁵ An unsecured loan obtained for \$6,251 in June 2013 was more than 120 days past due with a balance of \$1,301 (SOR ¶ 1.d). No payments had been made on the debt in the previous two years. Two cellphone accounts from 2013 and 2012 were in collection for \$2,336 (SOR ¶ 1.k) and \$229 (SOR ¶ 1.h). A cable television and Internet service provider placed \$319 for collection in December 2015 (SOR ¶ 1.i). (GEs 2-4.)

On August 24, 2017, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). He explained that his spouse handled their finances because of his multiple deployments and security details when he was in the military. Applicant admitted that he did not pay attention to his bills, and until recently, he believed that his household finances were in order. He became alerted to some financial struggles when his vehicle was voluntarily repossessed in approximately 2014. He regained possession after paying the past-due balance, but his spouse again fell behind on his loan payments. They then surrendered the vehicle voluntarily, and were led to believe that the creditor would settle his balance for \$3,000. They did not have the funds to make a lump-sum payment so the unpaid balance accrued to approximately \$9,000. Applicant stated that it was likely that other debts were over 120 days past due or in collection, but he did not know for sure. When confronted with the debts on his credit record, Applicant recalled the utility debt (SOR ¶ 1.i) and a personal loan (SOR ¶ 1.b, possibly duplicated in SOR ¶ 1.j), which first came to his attention during his 2014 background investigation. He denied any knowledge of the other delinquencies on his credit record, and explained that he had not known that his spouse had obtained the credit cards with the creditor in SOR ¶¶ 1.f and 1.g.⁶ (GE 4.)

Applicant told the OPM investigator that he took over the family's finances in August 2017; that he was surprised to learn that there were delinquent credit-card accounts on his credit record because his spouse told him she did not have any credit cards; and that he would contact his creditors to settle his debts. Applicant volunteered that he was granted a service-connected disability of 90% in August 2017, and that he would make payments toward his debts on receipt of about \$24,000 in expected retroactive disability income. He added that his spouse had a pending worker's compensation claim. Applicant showed little knowledge of his household expenses. He reported monthly income of \$1,300 from his employment and \$2,100 per month from his military pension. He acknowledged that he had been negligent concerning his financial responsibilities, and indicated that resolution of his debts was largely dependent on his spouse's settlement of her work injury. (GE 4.)

⁵ The credit cards are listed as individual accounts on Applicant's credit record. Neither Applicant nor his spouse explained how the debts were incurred. It is possible that his spouse was an authorized user on his accounts, but there is no evidence in that regard.

⁶ Applicant's September 2016 credit report (GE 2) lists the accounts as individual accounts, so Applicant either opened them or his spouse opened them in his name.

For calendar year 2017, Applicant had \$78,985 in wage income, \$30,708 in military retirement income, and \$11,408 in Veterans Affairs (VA) disability income. His spouse had her SSDI of \$23,782. (AE I.)

In June 2018, Applicant's spouse had a motor vehicle accident. She testified that she owed "less than \$8,000" on her car loan, but she had let the insurance lapse because she was considering trading it for another vehicle. She agreed to a voluntary repossession believing she had equity in the car, but she was held liable for a \$29,119 balance on the loan. (AE I; Tr. 65-66.) Applicant and his spouse then purchased a 2017 model-year minivan for her. They obtained a loan for \$32,814 at 26% interest. Monthly payments are \$753 per month for 72 months. (GE 3; Tr. 67-69.) Applicant's spouse's disability income covers the monthly payment and insurance on the vehicle. (Tr. 70.)

As of September 2018, Equifax was reporting past-due balances of \$9,842 on Applicant's defaulted car loan (SOR ¶ 1.a); \$4,333 on the payday loan in SOR ¶ 1.b; \$2,026 on the loan in SOR ¶ 1.d; and \$934 and \$560 on the credit cards in SOR ¶¶ 1.f and 1.g. Three debts were reportedly in collection: a \$229 cellphone debt (SOR ¶ 1.h); a loan inactive since December 2015 with a balance of \$3,596 (SOR ¶ 1.c, no account number listed); and a cellphone debt from August 2017 with a balance of \$1,542 (SOR ¶ 1.e). Applicant and his spouse dispute the balance of the cellphone debt in SOR ¶ 1.e because after their contract ended, they returned the cellphones to the provider, who gave them only the trade-in amount and not what the phones are worth. A collection entity now holds the debt. (AE I; Tr. 90-91.) The debts in SOR ¶¶ 1.i-1.l were no longer on Applicant's credit report. (GE 3.)

Applicant's spouse continues to receive medical treatment, but her co-payments are affordable. (Tr. 50.) In October 2018, she had three major surgeries. She was billed \$3,600, although she believes she is legally responsible for only \$1,000 of that amount. She resubmitted a claim to TRICARE. (Tr. 51-52.) She has incurred approximately \$2,100 in dental expenses since October 2018. (Tr. 80.) She estimates that they have paid \$15,000 in medical expenses over the years for her care. (Tr. 54.) Applicant and his spouse have not paid any medical expenses for their daughter since 2015. (Tr. 49.)

On October 5, 2018, the DOD CAF issued an SOR to Applicant because of the delinquent consumer credit (non-medical) debts on his credit reports totaling \$31,886. When he responded to the SOR on November 13, 2018, Applicant indicated that he and his spouse had retained an attorney to assist them in a bankruptcy filing. (Answer.) Applicant had previously resisted filing for bankruptcy in the belief that they could repair their financial situation. After becoming involved in their finances, he realized that their debt could not be repaid. (Tr. 118-121.) Applicant and his spouse received \$2,938 in child support in 2018. Applicant's wage earnings totaled \$63,262. His retirement income was \$31,008, and he received \$24,500 in VA disability payments. Applicant's spouse had only her monthly disability income, which totaled \$7,754. (AE I.) Their outstanding debt exceeded \$1.2 million. (AE I.)

As of December 2018, Applicant and his spouse were approximately \$629 past due for utility service at their current residence. Applicant arranged to repay the past-due balance at \$187.24 per month starting in February 2019.⁷ (AE F; Tr. 77-78.)

On January 15, 2019, Applicant and his spouse retained a bankruptcy attorney at a fee of \$2,500 plus the \$335 bankruptcy filing fee. (AE H.) To assist in preparing their bankruptcy petition, Applicant and his spouse obtained their credit reports. Applicant's credit report showing five outstanding balances on closed accounts: SOR ¶¶ 1.a (\$9,842); 1.b (\$4,658); 1.d (\$2,180); 1.f (\$934); and 1.g (\$560). (AE E.) On February 5, 2019, Applicant and his spouse obtained the credit counseling required to file for bankruptcy. (AE G.)

On February 12, 2019, Applicant and his spouse filed a joint Chapter 7 bankruptcy petition. They listed \$44,555 in secured claims: a 401(k) account valued at \$19,823;⁸ the car purchased in June 2018 on which they owed \$32,879; and a 2008 model-year vehicle on which Applicant owed \$3,996.⁹ They claimed their secured property as exempt from the bankruptcy. They listed nonpriority unsecured claims totaling \$1,218,082, which included a \$1,097,394 medical debt owed to a cancer institute for their daughter's care;¹⁰ the debts in SOR ¶¶ 1.a-1.b, 1.d-1.g, 1.i, and 1.k-1.l;¹¹ and a \$1,267 credit-card debt of Applicant's incurred in March 2013 that was not alleged in the SOR.¹² Several other debts belonged to his spouse, including \$45,577 in student loans. They included some medical creditors with

⁷ Applicant's spouse initially testified that they had an outstanding utility bill with the creditor in SOR ¶ 1.i since 2012 that was rolled into their current account, and that they have been paying an extra \$187 per month for the last nine months to repay the debt. (Tr. 37-38.) However, documentation from the creditor shows a repayment arrangement to pay \$187.24 monthly from February 2019 through December 2019. (AE F.) When asked on cross-examination about repayment of any of the SOR debts, Applicant's spouse responded that payments were made to the creditor in SOR ¶ 1.i, but it appears that the \$187 payments are to resolve a recent utility delinquency. (Tr. 77-78.) She admitted that the repayment arrangements were made after they received the SOR. The full \$3,384 utility delinquency (SOR ¶ 1.i) from 2011 is listed on their bankruptcy petition. (AE I.)

⁸ Applicant and his spouse listed a \$7,680 claim ("401(k) loan") incurred in June 2018 that is secured by the \$19,823. (AE I.) Applicant's spouse testified that it is not a 401(k) loan but rather is Applicant's contribution to his 401(k). (Tr. 86.)

⁹ Applicant's spouse testified that they thought Applicant's vehicle was paid off, but after an audit of the account, they were advised that they owed a balance. She offered to settle with the creditor for \$1,300, and was awaiting a response to her offer as of the hearing. (Tr. 67.) She was told the account had been charged off in 2015, even though she asserts that they had been making payments on the loan. (Tr. 85-86.)

¹⁰ Applicant's spouse testified that they paid from \$200 to \$500 a month to the cancer institute at one point in an effort to keep the debt off their credit reports. (Tr. 81.)

¹¹ Applicant and his spouse included among their nonpriority unsecured debts a loan of Applicant's in collection for \$3,780. It may well be the debt in SOR ¶ 1.c, although it is unclear. They did not include the loan in SOR ¶ 1.j. Applicant's spouse asserted it was paid through military allotment before September 2016. (Tr. 74-76.) The loan terms suggest that it is the same debt in SOR ¶ 1.b, which has not been paid and was listed on their bankruptcy petition. Whether it is a duplicate listing or has been paid, it was no longer listed as a past-due debt on Applicant's credit report as of September 2018. (GE 3; AE E.)

¹²It is unclear whether that account was ever delinquent. It does not appear on Applicant's credit reports.

no balances listed. Their attorney advised them to list all their medical creditors, even those that are being repaid. (Tr. 51.) In the 90 days preceding their bankruptcy filing, they reportedly had made payments totaling \$16,169 toward their household expenses and medical and dental bills. In the year before they filed, they gave \$9,145 to Applicant's mother-in-law to cover their share of the expenses for a family camp; \$4,070 to their older daughter for her rent, daycare, college, and other expenses; \$2,200 to Applicant's sister-in-law for summer camp for her son with special needs and for repairs to the family camp; and \$10,000 to their younger daughter for her drug rehabilitation, rent, and food. (AE I.) In response to whether they made any gifts or contributions with a total value exceeding \$600 to any charity in the two years preceding their filing, they listed church donations of \$12,000. (AE I.) Applicant's spouse testified discrepantly that the \$12,000 was donated over four years. (Tr. 66.) Applicant and his spouse reported cash assets on hand totaling \$2,230, but one checking account was overdrawn for \$103. (AE I.)

Applicant and his spouse now handle their finances together. (Tr. 61.) Their combined monthly income is \$9,343, and their monthly expenses are \$9,257. (AE I.) They are currently paying an estimated \$800 in medical and dental expenses each month. They lease their cellphones, and they pay \$482 a month for cellphone and cable service. Applicant's spouse testified that their cellphone and cable television contracts end in March 2019. They plan to change to prepaid phone services at \$30 a month since they will own the phones and to reduce their cable costs by paying only for Internet service. (Tr. 87-88.) They no longer take out any payday loans. (Tr. 95.) They have never been late on their rent. (Tr. 72.) Their finances were impacted by the partial government shutdown in January 2019 in that Applicant did not receive his retirement pay on time. (AE M.)

On their bankruptcy petition, Applicant and his spouse reported that they are owed \$7,900 in child support for their granddaughter's care. (AE I.) They currently receive \$188 monthly in child support. (Tr. 61.) Applicant is still owed retroactive disability pay from the VA for the period June 2016 to July 2017. (Tr. 62, 115.) His spouse received \$166,000 from her work-injury settlement after her lawyer took his fee. Applicant's spouse testified that the funds went to TRICARE and Medicare for her medical expenses associated with her accident. (Tr. 63-64.)

Applicant and his spouse owe no past-due taxes, although they anticipate that they will owe about \$1,100 to the Internal Revenue Service for tax year 2018. They plan to repay any taxes owed under an installment repayment plan. (Tr. 97.)

Applicant's spouse attended college from 2004 to 2008. She made some student loan payments of \$348 to \$412 per month from 2010 until 2017. When the current loan servicer acquired her loans, her monthly payment ballooned to \$756. Her loans were then placed in forbearance. Applicant and his spouse understand that her student loans will not be dismissed in their bankruptcy, but they believe the loans might be discharged because of her disability. (Tr. 97-101.)

Applicant and his spouse provide some financial assistance to their older daughter when they can. She works as a nurse but is a single mother. (Tr. 98.)

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.

Available credit reports and the bankruptcy petition establish the delinquencies in the SOR, with the possible exception of the debt listed in SOR ¶ 1.j, which was paid or is possibly an earlier balance of the loan in SOR ¶ 1.b. Applicant's bankruptcy records show that his and his spouse's financial problems are more extensive than those alleged in the SOR. Although several of the nonpriority unsecured debts belong to his spouse, Applicant and his spouse are jointly liable on some unalleged debts, including a medical debt exceeding \$1 million owed to a cancer institute. Applicant's loan for his current vehicle, which he had believed was paid off, was charged off for approximately \$3,996. Debts not included in the SOR cannot be considered for disqualifying purposes.¹³ Even so, the debts

¹³ In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in a SOR may be considered, as follows:

(a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for the whole-person analysis under

alleged in the SOR are enough to implicate disqualifying conditions AG ¶¶ 19(a), “inability to satisfy debts,” and 19(c), “a history of not meeting financial obligations.”

Applicant has the burden of establishing matters in mitigation. 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.

Applicant’s utility debt in SOR ¶ 1.i is a charge-off balance from December 2011. The cellphone delinquencies in SOR ¶¶ 1.h and 1.k are from 2013 and 2012, respectively. Neither Applicant nor his spouse made any payments on the loan in SOR ¶ 1.d for at least two years as of August 2016. Respective dates of last activity on the car loan (SOR ¶ 1.a) and the payday loan (SOR ¶ 1.b) were June 2015 and May 2015. These delinquencies were not incurred recently, but they had not been paid as of February 2019. The credit card debts in SOR ¶¶ 1.f and 1.g became past due in 2016. They too had not been paid as of February 2019. AG ¶ 20(a) does not mitigate such persistent delinquency.¹⁴

Applicant has a considerable case for mitigation under AG ¶ 20(b). His younger daughter’s serious medical issue led his spouse to become a per-diem employee to give

Directive Section 6.3.

¹⁴ A debt that became delinquent several years ago is still considered recent because “an applicant’s ongoing, unpaid evidence a continuing course of conduct and, therefore, can be viewed as recent for the purposes of the Guideline F mitigation conditions.” ISCR Case No. 15-06352 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sep. 13, 2016)).

her more time to care for their daughter, but they lost secondary medical insurance coverage as a result. Available hospital billing records from 2013 show that some medical expenses for their daughter were either paid or written off, but Applicant and his spouse incurred more than \$1 million in non-covered medical costs for their daughter's care. Applicant's spouse suffered an unforeseen injury at work in 2012. She was still unemployed when she was diagnosed with a terminal illness in March 2014. Her medical expenses were largely covered by insurance, but they had only one income for several years. Applicant was granted a 90% VA disability starting in August 2016, and he began receiving his military retirement, but his spouse did not receive any SSDI until June 2017. The delay in her receipt of SSDI was outside of her control. By then, the accounts in the SOR were already charged off or in collection.

For AG ¶ 20(b) to fully apply, Applicant is required to have acted responsibly under the circumstances. An element of financial responsibility is knowing the status of one's financial obligations. Due to his multiple deployments and other military duties that kept him away from home for extended periods, Applicant had his spouse handle their finances. While perhaps understandable under the circumstances, Applicant should have exercised some oversight, especially over the accounts in his name. Given the expense of his daughter's treatments over the years, Applicant had good reason to question whether he and his spouse were meeting all their financial obligations. Applicant knew as of 2014, when his vehicle was initially repossessed, that they had some financial problems. He apparently relied on his spouse's assurances that they had no past-due credit cards. Applicant told an OPM investigator that he took over the family's finances in August 2017. Although his spouse needed a vehicle after her accident in June 2018, one has to question Applicant's financial judgment in agreeing to take on a \$754 monthly car payment, even if her SSDI covers the loan payments. Applicant and his spouse live from paycheck to paycheck in part because of the choices that they made, including for cellphone, Internet, and cable television expenses totaling \$428 a month. They gave money to family members, including for upkeep of a family camp, when collection debts went unpaid. It is difficult to find that Applicant has acted fully responsibly with regard to handling his personal finances, notwithstanding the considerable impact of several circumstances outside of his control.

Applicant and his spouse filed for a Chapter 7 bankruptcy only two days before his security clearance hearing. A bankruptcy filing does not preclude the Government from considering the negative security implications of an applicant's recurring financial problems. See ADP Case No. 17-00684 at 3 (App. Bd. Aug. 7, 2018). In that regard, Applicant and his spouse had no record of financial problems before their daughter's diagnosis. They obtained the financial counseling required for a filing, which satisfies the first component of AG ¶ 20(c). A Chapter 7 bankruptcy discharge would eliminate much, but not all, of their financial stress. There is the matter of his spouse's student loans, which are not likely to be discharged in the bankruptcy. His spouse may be relieved of her legal liability for the loans because of her disability, but that remains to be seen. It would be premature to fully apply either AG ¶ 20(c) or AG ¶ 20(d) without a bankruptcy discharge. The meeting of creditors had not been held as of the close of the evidentiary record. They were behind on their utility account as recently as December 2018. AG ¶ 20(e) could have

some applicability, but only to the debt in SOR ¶ 1.j in that it may be a duplicate listing of the debt in SOR ¶ 1.b or paid off before the SOR was issued. The debt no longer appears on Applicant's credit report. The financial considerations security concerns are not fully mitigated.

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 intended as a debt collection process or designed to punish applicants for past mistakes or shortcomings. See ISCR Case No. 17-01473 (App. Bd. Aug. 10, 2018). Yet Applicant's creditors will be left with no legal recourse if he is granted a Chapter 7 bankruptcy discharge.

Applicant's more than 24 years of honorable active duty service weighs in his favor. Because he was away from home for long periods, he relied on his spouse to handle their household finances. Although his absence from home does not immunize him or excuse him from responsibly monitoring his finances, it also appears that his spouse kept aspects of their finances from him. Applicant and his spouse have always paid their rent on time. There is no evidence of any delinquency before serious medical illnesses for Applicant's spouse and daughter negatively impacted their finances starting in 2010. Applicant's spouse testified that she and Applicant have paid about \$130,000 to \$140,000 in medical costs for their daughter over the years, although corroborating documentation was not presented in evidence. They currently pay about \$800 a month in medical expenses. Despite annual income exceeding \$100,000, they have no reasonable resort apart from a Chapter 7 bankruptcy to relieve their significant debt burden. Even so, I cannot ignore the timing of his efforts at debt resolution. Applicant indicated on November 13, 2018, in response to the SOR, that he and his spouse had retained an attorney to assist them in filing for bankruptcy. They did not formally retain their bankruptcy attorney until January 15, 2019. The Appeal Board recently reaffirmed that an applicant who begins to resolve his debts only after being placed on notice that his clearance was in jeopardy "may be disinclined to follow rules and regulations when [his] personal interests are not at stake." See ADP Case No. 17-00263 at 3 (App. Bd. Dec. 19, 2018) (citing ISCR Case No. 16-03122 at 3-4 (App. Bd. Aug. 17, 2018)).

In exceptional cases, an administrative judge may grant initial or continued eligibility for a security clearance, despite the presence of an issue(s) that can be partially but not completely mitigated.¹⁵ Applicant's financial situation will improve if much of his and his

¹⁵ Appendix C of Security Executive Agent Directive (SEAD) 4 grants DOHA administrative judges the discretionary authority to grant initial or continued eligibility for a security clearance *despite the presence of an*

spouse's debt is discharged in the bankruptcy, and if they reduce their monthly cellphone and cable service expenses as promised. However, Applicant has yet to demonstrate that his financial situation is under control and that he can be counted on to make timely payments on his debts going forward. Based on the evidence before me, it would be premature to conclude that his financial problems are sufficiently resolved to where they no longer present a security risk.

This decision should not be construed as a determination that Applicant cannot or will not attain the financial reform and rehabilitation necessary to be eligible for a security clearance in the future. After applying the disqualifying and mitigating conditions to the evidence presented, I conclude that it is not clearly consistent with the national interest to grant or continue security clearance eligibility for Applicant at this time.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraphs 1.k-1.l:	Against 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.

Elizabeth M. Matchinski
Administrative Judge

issue(s) that can be partially but not completely mitigated with the provision of additional security measures. See also Memorandum, Director for Defense Intelligence (Intelligence and Security), dated January 12, 2018 ("Appendix C identifies authorized exceptions that are to be utilized when making adjudicative decisions to grant initial or continued eligibility for access to classified information or to hold a sensitive position . . . Effective immediately, authority to grant clearance eligibility with one of the exceptions enumerated in Appendix C is granted to any adjudicative, hearing, or appeal official or entity now authorized to grant clearance eligibility when they have jurisdiction to render the eligibility determination.")