



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



In the matter of:	)	
	)	
[Name Redacted]	)	ISCR Case No. 18-02383
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Carroll J. Connelley, Esq., Department Counsel  
For Applicant: *Pro se*

05/06/2019

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**Decision**

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MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant has had difficulty repaying his student loans. He had an agreement to settle \$127,795 in private student loans for only \$10,966, but then could not make the installment payments. A \$1,304 credit-card judgment from January 2012 has yet to be addressed. More progress is needed toward resolving his debts. Clearance is denied.

**Statement of the Case**

On October 19, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing a security concern 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 initially responded to the SOR allegations on November 8, 2018. He re-drafted his response on November 14, 2018, at the request of the DOD CAF. He requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). His 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 March 18, 2019, I scheduled a hearing for April 9, 2019.

At the hearing, six Government exhibits (GEs 1-6) were admitted in evidence. Eight Applicant exhibits (AEs A-H) were admitted in evidence, and Applicant testified, as reflected in a hearing transcript (Tr.) received on April 19, 2019.

### **Findings of Fact**

The SOR alleges under Guideline F that, as of October 19, 2018, Applicant was \$129 past due on a student loan with a \$2,184 balance (SOR ¶ 1.a); that he was \$71 past due on a student loan with a \$1,212 balance (SOR ¶ 1.b); that he owed a charged-off student loan of \$50,607 (SOR ¶ 1.c); that he owed student loans of \$2,357 (SOR ¶ 1.d) and \$1,308 (SOR ¶ 1.e) in collection; and that he owed an unpaid credit-card judgment debt of \$1,304 from January 2012 (SOR ¶ 1.f). When he responded to the SOR allegations on November 14, 2018, Applicant denied that he was delinquent on his student loans. He indicated that he was current on the loans in SOR ¶¶ 1.a and 1.b; that he had “set up a way to pay off” the debt in SOR ¶ 1.c; and that he had paid off the loans in SOR ¶¶ 1.d and 1.e. He admitted the credit-card judgment in SOR ¶ 1.f, but stated that he might have paid it off. It was not listed on his credit report.

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

Applicant is 33 years old and not married. He attended a community college for one year in 2004 or 2005. From approximately August 2007 to July 2008, he attended a for-profit university.<sup>1</sup> He obtained two private student loans of \$47,828 and \$25,479 from the lender in SOR ¶ 1.c,<sup>2</sup> and four federal student loans, including Stafford loans for \$2,315 (SOR ¶ 1.a) and \$1,185 (SOR ¶ 1.b).<sup>3</sup> (GEs 3-4; AE A.) Applicant’s father co-signed the

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<sup>1</sup> Applicant indicated on his security clearance application that he attended the university from July 2006 to July 2007. (GE 1.) Based on the dates of his student loans, he likely attended the school from July or August 2007 to July 2008.

<sup>2</sup> Only the larger of the two private student loans from the lender in SOR ¶ 1.c (ending in x8635) was alleged in the SOR. The other student loan, ending in x8643, does not appear on his credit reports. Applicant admitted that he obtained two large student loans from the lender. (Tr. 42.)

<sup>3</sup> Applicant indicated that he had four Stafford student loans (three subsidized and one unsubsidized). (Tr. 24.) He presented documentation of three Stafford student loans under the same account ending in #4034. His loan documentation shows a “1-01 Stafford-Subsidized” student loan for \$2,315 in August 2007 with a balance of \$2,188 (SOR ¶ 1.a); a “1-04 Stafford-Subsidized” loan of \$2,315 obtained in August 2007 paid by the creditor in SOR ¶ 1.d in September 2011; and a “1-03 Stafford-Unsubsidized” loan obtained in August 2007 for \$1,185 that was paid by the lender in SOR ¶ 1.e in September 2011. (AE B.) Department Counsel indicated at Applicant’s hearing that the federal loans in SOR ¶ 1.a and ¶ 1.b are respectively duplicated in SOR ¶ 1.d and

loans. Applicant struggled academically, and he withdrew from the college after one year. (GE 2.)

Applicant moved home and was unemployed until April 2009, when he began working in a temporary job for a marine supply company. On October 15, 2009, a judgment of \$2,090 (judgment #1, not alleged) was entered against Applicant for credit-card debt he incurred while in college. Applicant had forgotten about the account after he moved. In April 2010, he was hired into a permanent position as a warehouse technician. (GEs 1-2.) With his father's assistance, Applicant began repaying his student loans. In January 2011, he moved into an apartment. (GE 2.)

Applicant's father became ill in early 2011 and passed away in July 2011. (GE 2; Tr. 39.) Applicant could not afford his student-loan payments on his own. In September 2011, the creditor identified in SOR ¶ 1.c charged off one of his private loans for \$50,607 and transferred two Stafford loans to the guarantor identified in SOR ¶¶ 1.d and 1.e with balances of \$2,616 and \$1,452. (GEs 2-4; AE B.)

Applicant moved back home to help his mother in January 2012. (Tr. 39.) His employment income was approximately \$400 a week. (GE 2.) In late January 2012, a default judgment for \$1,304 (judgment #2, SOR ¶ 1.f) was entered against Applicant for credit-card debt incurred in college. (GE 5; Tr. 20.)

In August 2013, Applicant began a new job as a technician for a chemical company. He earned approximately \$500 a week, and he made some payments on his student loans in 2015. Applicant had some difficulties with his managers, and he was terminated in May 2016 for the stated reason that he was not a good fit for the job. The company eventually agreed to pay him a settlement of \$3,500, for violating his human rights in return for him not disclosing the settlement terms.<sup>4</sup> (GE 2; Tr. 73.) A production manager provided an employment reference for Applicant in his search for a new job. (Tr. 38.) He attested that Applicant always took care to complete his work assignments quickly and accurately. Applicant had a positive attitude and worked well with his co-workers. He was a reliable resource in the production department. (AE G.)

Applicant collected unemployment compensation of \$350 a week from approximately May 2016 to March 2017. He attended an advanced manufacturing sheet-metal program at a community college from July 2016 to December 2016 and otherwise

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1.e as they have the same account numbers. The creditor in SOR ¶¶ 1.d and 1.e was the guarantor for the Stafford loans, which are all listed under the same account number by the lender. (AE B.) Applicant testified that two of the Stafford loans were listed as paid only because they were passed on to the guarantor. (Tr. 25.) He now thinks that the loans in SOR ¶¶ 1.d and 1.e are back with the lender and are the loans in SOR ¶¶ 1.a and 1.b. (Tr. 55.) Applicant's May 2018 credit report does not list the debts in SOR ¶¶ 1.d and 1.e (GE 4), so they may be the loans in SOR ¶¶ 1.a and 1.b, or they may be the federal loans paid through garnishment in 2017, as detailed in GE 2. The evidence falls short of substantiating that he owes the additional debt balances alleged in SOR ¶¶ 1.d and 1.e.

<sup>4</sup> Applicant testified that he was paid the settlement in January 2016. (Tr. 73.) However, according to his SF 86, he was terminated in May 2016 (GE 1), so it is likely that he received the settlement in January 2017.

spent his time looking for work, helping out at home, and engaging in recreational activities. (GE 2; AE E.) After he finished the first semester of the program at the community college, he received a job offer from a defense contractor to become a semi-skilled sheet metal mechanic in its apprenticeship program. (Tr. 32. 70.)

With his application for that employment, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86) on December 23, 2016. Applicant responded affirmatively to an inquiry concerning whether he was currently delinquent on any federal debt and disclosed that he owed student-loan debts of approximately \$80,000. (GE 1.)

Applicant was granted an interim secret clearance in mid-March 2017, and he began working for the defense contractor in late March 2017. (GE 2; Tr. 33, 35-37.) Available credit information revealed that Applicant was in default on the private student loan in SOR ¶ 1.c with an accrued balance of \$69,260. The federal student loans acquired by the guarantor in September 2011 were in collection for \$2,357 (SOR ¶ 1.d) and \$1,308 (SOR ¶ 1.e). Applicant had a credit card account with a \$2,341 balance (\$41 over its reported credit limit) that he was repaying according to its terms. Neither judgment debt #1 nor judgment debt #2 was on his credit record. (GE 3.)

In May 2017, the creditor executed a wage garnishment order to collect judgment debt #1. Applicant's wages were garnished at \$135 every paycheck from June 2017 to October 2017 to satisfy the debt. In June 2017, the U.S. Department of Education obtained a garnishment order to collect \$3,822 in defaulted federal student-loan debt, which Applicant indicated in April 2018 were the loans in SOR ¶¶ 1.d and 1.e. (GE 2.)

As of June 2017, Applicant owed \$119,719 on his two private student loans, including the loan in SOR ¶ 1.c. A collection entity offered to settle both loans for only \$14,661. Applicant could not afford the lump-sum payment, and the loan balances continued to accrue. (Tr. 44.) In September 2017, the collection entity offered to settle his then \$120,969 total balance for \$13,195. Applicant could not afford that payment. (GE 6.)

On April 5, 2018, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). He indicated that his student loans were no longer delinquent, but that he had yet to establish a repayment plan to avoid further delinquency. He stated that his wages were being garnished at \$100 a paycheck to repay two of his federal student loans (SOR ¶¶ 1.d and 1.e). He indicated that he had paid \$5 a month from March 2017 to November 2017 to rehabilitate a student loan. He could not then recall which one, although at his hearing he testified that he had rehabilitated the loans in SOR ¶¶ 1.d and 1.e, which were returned to the lender as shown in SOR ¶¶ 1.a and 1.b. (Tr. 55.) As for his financial matters generally, Applicant's take-home income was \$460 per week after the garnishment for his student loans. His monthly expenses were \$400 to his mother for household needs; \$100 for gasoline; \$275 in repayment of a car loan; \$150 for cellphone service; \$300 for groceries; \$100 for alcohol; and \$200 for cigarettes. Applicant was unable to recall the details of his student loans, but he planned to gather his financial paperwork for the OPM investigator. (GE 2.)

On April 6, 2018, Applicant was re-interviewed by the OPM investigator. Applicant provided tax records showing he had made some student loan payments in 2015 and 2017; a settlement letter for his private student loans (SOR ¶ 1.c and an unalleged loan with a \$25,479 principal balance); garnishment paperwork showing \$1,296 had been taken from his pay toward his federal loans; and documentation of his satisfaction of judgment #1 in October 2017 through wage attachment. Applicant expressed an intention to eventually satisfy his delinquencies. (GE 2.)

As of April 2018, Applicant was past due \$129 on a federal student loan with a \$2,184 balance (SOR ¶ 1.a) and \$71 past due on a federal student loan with a \$1,212 balance (SOR ¶ 1.b). The private student loan that had been charged off for \$50,607 (SOR ¶ 1.c) had been removed from his credit report (GE 4), although it had not been satisfied. Applicant had retained the services of a law firm to clean up his credit record, and the law firm successfully had that loan removed from his credit record. (AE D.)

On May 11, 2018, Applicant began making \$100 weekly student-loan payments. Beginning on August 17, 2018, he lowered his weekly payment to \$50. With limited exception, he made his weekly payments on time. His payments were applied to the interest owed on his loans. (AE C; Tr. 20, 28, 51.) The transaction record of his account as reported by the lender does not identify the loan or loans to which his payments were applied, although a resolution agreement for his private student loans with the lender suggests that the payments went toward his private student loans.<sup>5</sup> (AE C.)

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<sup>5</sup> The same lender holds the private student loans and his outstanding Stafford federal loans. The payments were applied to the account number ending in x4034. (AE C.) However, the resolution agreement for his private student loans shows that he had paid \$1,900 toward the student loans before entering into the resolution agreement (AE A), and the payments credited to the account ending in x4034 totaled \$1,924, inclusive of fees. (AE C.)

exception, he made his weekly payments on time. His payments were applied to the interest owed on his loans. (AE C; Tr. 20, 28, 51.) The transaction record of his account as reported by the lender does not identify the loan or loans to which his payments were applied, although a resolution agreement for his private student loans with the lender suggests that the payments went toward his private student loans.<sup>6</sup> (AE C.)

Applicant earned between \$500 and \$600 a week in his defense-contractor job. (Tr. 38-39.) As of May 2018, he was current on a car loan obtained in November 2017 for \$15,897 being repaid at \$275 per month. He was also making timely payments on a credit-card account opened in February 2015. His account had a \$2,549 balance. (GE 4.) He provided no evidence of an unexpected circumstance that could explain or justify why he was over two months behind on his federal student loans with scheduled terms of \$33 and \$17 a month (SOR ¶¶ 1.a-1.b). (GE 4.)

In September 2018, Applicant applied for two open entry-level positions at his employment toward becoming either an electrical draftsman or a structural/arrangements draftsman. He was selected for interviews that never took place. (AE F.) On October 19, 2018, the DOD CAF issued the SOR to Applicant because of his delinquent student loans and the unpaid judgment for \$1,304 (SOR ¶ 1.f). His interim clearance was withdrawn, and he was walked off the job.<sup>7</sup> (Tr. 30, 33.) He received his last paycheck in late October 2017 and had no income for about a month until he began receiving unemployment compensation of \$360 a week in December 2018. (Tr. 38-39, 45-48, 56, 61.)

As of November 2018, Applicant's federal student loan in SOR ¶ 1.a had a \$2,198 balance with a scheduled repayment at \$33.67 per month for 81 months. (AE B.) The balance of the loan in SOR ¶ 1.b was approximately \$1,200. Applicant believes that the federal student loans in SOR ¶¶ 1.d and 1.e are no longer owed; that they were either paid or are the same loans alleged in SOR ¶¶ 1.a and 1.b. (Tr. 55.) Applicant testified that he had been repaying both loans (SOR ¶¶ 1.a and 1.b) together at \$68 a month. He admitted being "a little late" on his payment as of his hearing for his clearance eligibility. (Tr. 51-53.)

On November 5, 2018, Applicant entered into a resolution agreement for his private student loans (SOR ¶ 1.c, balance \$74,594, and unalleged loan balance \$53,201, after having paid \$1,900 toward the loans). A collection entity agreed to settle both loans for only \$10,966 and to accept installment payments. (AE A.) Under the terms of the settlement, Applicant was required to pay \$200 a month from November 30, 2018, through August 30, 2022. (AE A), with interest on the loans continuing to accrue until the settlement amount is satisfied. Applicant was advised that should he miss a payment, any amounts paid under the settlement would not be counted toward the debt. Applicant paid \$250 in

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<sup>6</sup> The same lender holds the private student loans and his outstanding Stafford federal loans. The payments were applied to the account number ending in x4034. (AE C.) However, the resolution agreement for his private student loans shows that he had paid \$1,900 toward the student loans before entering into the resolution agreement (AE A), and the payments credited to the account ending in x4034 totaled \$1,924, inclusive of fees. (AE C.)

<sup>7</sup> Applicant is apparently subject to recall by the defense contractor if his clearance should be adjudicated favorably.

December 2018. He has not made any payments since January 2019. He contacted the collection entity and was advised that his loans had been transferred again. As of April 2019, he was awaiting word from the new entity whether the settlement offer was still valid. (AE H; Tr. 45-50.)

As of April 2019, Applicant had made no payments on the \$1,304 credit-card judgment (SOR ¶ 1.f). Sometime after he answered the SOR, Applicant contacted the collection attorney, and promised that he would make weekly payments once he returns to work. (Tr. 53-55.)

Applicant stopped paying his mother rent of \$400 a month when he became unemployed in October 2018. He pays \$50 to \$60 of their cellphone costs. He also pays his car loan at \$275 per month, car insurance at \$112 per month, and his grocery expenses. He was paying \$68 a month toward his student loans in SOR ¶¶ 1.a and 1.b. (Tr. 58-59.) Applicant received an income tax refund of “a little under \$1,000” for tax year 2018 that gave him a financial cushion while unemployed. (Tr. 60-61.)

### **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. . . .

An applicant is not required to be debt free, but is required to manage his finances in a way as to exhibit sound judgment and responsibility. The concern under Guideline F is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information.

After his father passed away in 2011, Applicant defaulted on his private and federal student loans obtained in 2007 for study at a for-profit university. A private student loan was charged off for \$50,607 in September 2011 (SOR ¶ 1.c). He also stopped paying on a private student loan, obtained for \$25,479, which was not included in the SOR.<sup>8</sup> As of

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<sup>8</sup> 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 an SOR may be considered stating:

(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 Directive Section 6.3.



February 2017, two federal student loans were in collection for \$2,357 and \$1,308 (SOR ¶¶ 1.d and 1.e). In June 2017, the U.S. Department of Education obtained an order to garnish Applicant's wages to recover some \$3,822 in delinquent federal student loans. It is unclear whether the loans in SOR ¶¶ 1.d and 1.e were paid through that garnishment from his wages in 2017 or were returned to the original creditor and are the Stafford loans in SOR ¶¶ 1.a and 1.b, as Applicant now believes. His credit record shows that, as of April 2018, the Stafford loans in SOR ¶¶ 1.a and 1.b were delinquent with balances of \$2,184 and \$1,212. The evidence falls short of establishing that Applicant owed the delinquencies in SOR ¶¶ 1.d and 1.e as of the issuance of the SOR in October 2018.

Available information substantiates a record of delinquency on two credit-card accounts, although only one debt was alleged (SOR ¶ 1.f). An unalleged October 2009 judgment for \$2,090 was repaid by wage garnishment from June 2017 to October 2017. A January 2012 judgment for \$1,304 (SOR ¶ 1.f) is still outstanding. Applicant's record of delinquent accounts triggers disqualifying conditions AG ¶¶ 19(a), "inability to satisfy debts," and (c), "a history of not meeting financial obligations."

The burden is on Applicant to mitigate the negative implications for his financial judgment raised by his delinquent debts. Application of the aforesaid disqualifying conditions triggers consideration of the potentially mitigating conditions under AG ¶ 20. Five of the seven mitigating conditions warrant some consideration and could potentially apply in whole or in part. They are:

- (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

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In this case, Applicant's unalleged private student-loan debt will not be considered as a basis for disqualification under AG ¶¶ 19(a) and 19(c). However, his unalleged debt remains relevant in assessing mitigation and the likelihood of him making timely payments on his student loans going forward.

(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.

Regarding AG ¶ 20(a), the debt obligations in the SOR first became seriously past due in 2011. However, a debt that became delinquent several years ago is still considered recent because “an applicant’s ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions.” ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)). Despite recent efforts to rehabilitate his federal student loans, and his \$1,900 paid toward his private student loans between May 2018 and November 2018, AG ¶ 20(a) cannot fully apply. Applicant has not made any payments toward his private student loans since January 2019, and he has made no payments toward the January 2012 credit-card judgment debt.

AG ¶ 20(b) has some applicability in that Applicant has had periods of unemployment and underemployment, and his ability to repay his student loans was negatively impacted by his father’s death in September 2011. He had counted on his father to help him with his student-loan payments, and his income was insufficient to make the required payments on his own. Even if Applicant’s financial difficulties initially arose, in whole or in part, due to circumstances outside of her 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 her creditors and attempted to negotiate partial payments to keep debts current.

Applicant’s evidence in that regard is mixed. He was employed at an income of approximately \$500 a week from August 2013 to May 2016. He made some student-loan payments in 2015, although the amounts and timing of his payments are not in evidence. There is no evidence that he made any student-loan payments from May 2016 to March 2017, when he was unemployed and collecting an unemployment benefit at \$350 a week. He apparently rehabilitated some student loans after he began working for a defense contractor in March 2017, but those payments were only \$5 a month. As of April 2018, he was \$129 and \$71 past due on the federal student loans in SOR ¶¶ 1.a and 1.b, respectively, without any apparent explanation or justification. It was not until May 2018, after his OPM interviews, that he began a concerted, consistent effort to address his student loans by paying \$100 a week. Even so, he showed some responsibility by taking steps to address his student loans before the SOR was issued. He has been unable to meet the terms of a settlement for his private student loans since January 2019 because he lost his employment income. Applicant has not displayed similar initiative toward resolving his credit-card default judgment debt (SOR ¶ 1.f), however. As of his response to the SOR in November 2018, he did not know enough about the judgment to either confirm or deny the debt. As of his April 2019 hearing, he had spoken with the law firm collecting

the judgment debt. He did not provide the date of the contact, but it may reasonably be inferred that it post-dated his receipt of the SOR. Applicant's failure to keep himself updated about the status of his credit card account is not mitigated under AG ¶ 20(b).

AG ¶ 20(c) has some applicability because \$1,206 was garnished from his pay in 2017 in partial satisfaction of his federal student-loan debts. AG ¶¶ 20(c) and 20(d) are implicated because Applicant made consistent payments toward his private student loans from May 2018 to January 2019. He testified that he had been making \$68 payments toward the federal student loans in SOR ¶¶ 1.a and 1.b until very recently, although he presented no corroborating documentation. AG ¶ 20(e) applies only in that the evidence falls short of establishing the additional delinquency in SOR ¶¶ 1.d and 1.e as of the issuance of the SOR in October 2018.

An applicant is not required, as a matter of law, to establish that he has paid off every debt in the SOR. He is required to demonstrate that he has established a plan to resolve his financial problems and taken significant actions to implement the plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted). Applicant's track record of student-loan payments from May 2018 to January 2019 suggests that he would have taken full advantage of the opportunity to settle his \$127,795 private student-loan balance for \$10,966, payable in \$200 monthly installments from November 30, 2018, through August 30, 2022, if he had not lost his employment income. Student loans are an investment in one's future and do not carry the same judgment concerns as a record of irresponsible spending or overreliance on consumer credit cards. He has a record of timely payments on his open credit card and his car loan. In that regard, he has shown that he can manage some expenses responsibly, provided he has the income to do so.

At the same time, it is difficult to conclude when, or even if, he will alleviate the security significant financial burden of approximately \$130,000 in outstanding student loans. His employment income was certainly adequate enough for him to meet the minimal monthly repayments required for the federal loans in SOR ¶¶ 1.a and 1.b, and yet both loans were a few months past due as of April 2018. As of April 2019, he was not making any payments toward more than \$127,000 in private student-loan debt, and he was again late in making his \$68 monthly payments toward his federal student loans. He was waiting to hear whether the resolution agreement for his private student loans would be honored by a new collection entity.

### **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.

Applicant's situation is not unlike that of many students of his generation who take

out loans for their college education expecting to land a job at some future date that will justify taking on such debt. Yet Applicant did not help himself by attending a pricy for-profit institution, struggling academically, and then withdrawing from school without any degree, certificate, or credential. He was fortunate in gaining employment with a defense contractor in March 2017 that provided him an income to begin repaying his student loans. With his wages garnished in 2017 to repay some of his federal student-loan debt and a 2009 credit-card judgment debt, he was not in a position to take advantage of offers to settle his private student loans on terms very advantageous to him in June 2017 and in September 2017. He is credited with making consistent student-loan payments starting in May 2018, after his OPM interviews. 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.<sup>9</sup> Applicant’s recent failure to comply with the debt resolution agreement without some evidence that the current assignee will accept affordable installment payments causes a considerable level of uncertainty about his financial situation. Some concerns persist about his financial judgment because of his delinquency on his federal student loans in SOR ¶¶ 1.a and 1.b in the spring of 2018, when his income should have supported timely repayment. He was spending \$300 a month on discretionary items when he was behind on his student loans. 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:

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<sup>9</sup> 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 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.”)

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	Against Applicant
Subparagraphs 1.d-1.e:	For Applicant
Subparagraph 1.f:	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.

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Elizabeth M. Matchinski  
Administrative Judge