



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 19-00531
)	
Applicant for Security Clearance)	

Appearances

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

10/29/2019

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant defaulted on several consumer-credit debts, including two automobile loans charged off for \$19,096 and \$11,972. The \$11,972 debt was cancelled by the creditor. He used his tax refund to reacquire another vehicle from repossession in March 2019, and he settled a delinquent debt for furniture and computer back in August 2015, but other delinquencies have been ignored. The financial considerations security concerns are not sufficiently mitigated. Clearance is denied.

Statement of the Case

On March 6, 2019, 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.

On March 26, 2019, Applicant requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). He then submitted a detailed response to the SOR allegations on April 4, 2019. On August 19, 2019, Department Counsel indicated that the Government was ready to proceed to a hearing. On August 21, 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 August 28, 2019, I scheduled a hearing for September 24, 2019.

At the hearing held as scheduled, four Government exhibits (GEs 1-4) were admitted in evidence without any objections. A list of the GEs was marked as a hearing exhibit (HE I) for the record, but not admitted in evidence. Applicant submitted 26 enclosures with his Answer to the SOR, which were admitted into the record collectively at the hearing as an Applicant exhibit (AE A). Twelve additional Applicant exhibits (AEs B-M) were admitted in evidence without any objections. Applicant testified, as reflected in a transcript (Tr.) received on October 4, 2019.

I held the record open for three weeks after the hearing for additional evidence from Applicant. On October 14, 2019, Applicant submitted additional documents, which were admitted in evidence without objection as AEs N-CC.

Findings of Fact

The SOR alleges under Guideline F that, as of the March 6, 2019 SOR, Applicant owed delinquent debts totaling \$41,684 (SOR ¶¶ 1.a-1.q) on 17 accounts. In a detailed response, Applicant admitted the debts, but indicated that, in some cases, he did not have any “objective quality evidence” showing that he had opened the accounts. He explained that his spouse had been known to open accounts under his name and not inform him. He detailed circumstances that he believes mitigate several of the delinquencies. With respect to some debts, he explained that before he received the SOR, he believed charged-off debts or debts dropped from his credit report were “no longer a concern.” After considering the pleadings, exhibits, and transcripts, I make the following findings of fact.

Applicant is 36 years old, married, and the father of three children, ages 16, 13, and 12. He also has two stepchildren, ages 21 and 19. A high school graduate with an associate’s degree earned in 2013, he enlisted in the United States military after high school in June 2000. He served honorably until he was discharged for medical reasons in March 2011. He held a top secret security clearance throughout his time in the military. He was married to his first wife from September 2001 to August 2005. Since 2004 or 2005 Applicant has been paying child support of \$152 a week for his son from his first marriage. (GE 1; AEs A, M; Tr. 27, 33-34.) Applicant and his current spouse wed in July 2007. (GE 1.) They were separated from 2011 to August 2012, reconciled, and have been separated since June 2019. (Tr. 29.)

In April 2011, Applicant moved for his employment as an engineering technician with a semiconductor company. By mid-2013, his spouse was working as a vendor for a greeting card company. She wanted a vehicle with functioning air conditioning. In June 2013, they purchased a sedan, obtaining a car loan of \$27,600 (SOR ¶ 1.b), to be repaid at \$506 per month. In July 2013, they then purchased a 2007 model-year truck, financed for \$20,001. The amount of their monthly truck payment is not in the record. His spouse reduced her work hours to return to school. With the loss of spousal income and two vehicle payments, they began to struggle financially. They stopped paying on the car loan, and it was charged off for \$25,797 (SOR ¶ 1.b) in May 2014. The vehicle was repossessed. (GEs 1-4; AEs A, F, AA-BB.)

After Applicant's spouse had an accident in their truck, they traded it in for a new car in August 2015, obtaining a loan for \$33,236 (SOR ¶ 1.a). Both Applicant and his spouse were employed, and so they thought they could afford the \$763 monthly payments on their new loan while continuing to make their payments on the truck acquired only two years prior. They paid off the loan for the truck in October 2015, but they continued to struggle financially. Applicant attributes his financial problems at that time to a temporary loss of spousal income when his wife stopped working because of injury sustained in her vehicle accident. (GEs 3-4; AEs A, M, Z; Tr. 35, 46.) Applicant provided no details about the loss of spousal income or the dates of her unemployment.

In January 2016, Applicant accepted a job offer that was contingent on him obtaining a security clearance. (GEs 3-4; AE A.) On January 25, 2016, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86). He responded affirmatively to a financial record inquiry concerning whether he had any voluntary or involuntary repossessions or foreclosures in the last seven years and listed two vehicle repossessions: a car owned during his first marriage that was his ex-wife's responsibility, and the vehicle repossessed in 2014 (SOR ¶ 1.b). He indicated that the deficiency balance on that loan was charged off. Applicant also answered "Yes" to inquiries concerning whether he had any bills or debts turned over to a collection agency in the past seven years; whether he had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed in the past seven years; and whether he had been over 120 days delinquent on any debt in the past seven years. He related that about 15 accounts totaling \$5,000 in debt became negative between 2005 and 2013 while he transitioned from the military to civilian life, and because he and his wife were separated from 2011 to 2012. He stated that he was paying his bills "for the most part," that his credit score increased by about 30 points in the last six months, and that most if not all of the past-due debts had been charged off. (GE 1.)

By March 2016, several debts in Applicant's name or held jointly with his spouse had been charged off or were in collection. (GE 3.) In early April 2016, Applicant purchased a 2009 model-year truck, taking on a vehicle loan for \$12,044 (SOR ¶ 1.c) that required repayment at \$460 per month. He "needed" a truck capable of towing a 26-foot camper trailer and a 16-foot car hauler that he already owned. He was moving and "needed the car hauler to move stuff with." (Tr. 41.) He was consistently two months late in his payments for the truck. (GEs 3-4; AE R.) In August 2016, the job offer pending with his current employer

was rescinded for lack of a decision on his clearance, but he was still working for the semiconductor company. (AE A.)

In late December 2016, Applicant was laid off from his full-time job with the semiconductor company. He had a job lined up with his current employer in the southeastern United States, which he started in January 2017 at \$50,000 per year. (Tr. 28.) Relocation for his new job was at his expense. He drained his bank and retirement accounts to cover moving expenses and deposits for housing and utilities. (AE A.) While on an extended temporary-duty assignment from April 2017 to February 2018, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM) on July 3, 2017. He estimated that about 15 of his credit accounts were delinquent, and explained that he had wanted to pay the debts but was unable to do so due to his “expanding debt-to-income ratio.” He thought he could manage the payments when he incurred the debts, and “things began to snowball” after a loss of spousal income. Applicant acknowledged that food and housing took priority, and he ignored some bills. He indicated that he and his spouse were currently living within their means because his spouse was working. (GE 2.)

In May 2018, Applicant accepted a position at his current work location, which was more expensive than his previous locale. They were struggling to make their \$763 monthly payments for the sedan purchased in 2015, and they had just arranged for a voluntary repossession of the vehicle (SOR ¶ 1.a), so they acquired a 2005 model-year van with a \$2,000 down payment and a \$6,966 loan, to be repaid at \$301 per month. They made their payments for the van on time and paid off their loan in May 2019. (GE 2; AE U.) Applicant and his spouse no longer have the van. He testified about the van as follows: “It was cheaper for [his] daughter, stepdaughter [to] put a down payment on a vehicle and then we get the van registered and couldn’t drive the van because the cop decided to take the” (Tr. 43-44.) He did not elaborate further as Department Counsel redirected him to the debts in the SOR.

Applicant retained the services of a law firm in the summer of 2018 to clean up his credit record. He wanted to purchase the home he currently rents. Some debts were apparently removed from his credit record, but he stopped paying the law firm for its services in September or October 2018. (Tr. 34.) High water and electric utility costs in his current area caused him some financial strain. As of late November 2018, Applicant’s credit score was only 486. (AE I.) In December 2018, with water and electric bills totaling approximately \$926, he put off paying on his truck loan (SOR ¶ 1.c) obtained in 2016 in an effort to catch up on his water and utility bills (AE A.)

On March 6, 2019, the DOD CAF issued an SOR to Applicant, alleging delinquent debt totaling \$41,684, as follows:

Charged-off auto loan for \$19,096 (SOR ¶ 1.a)

The joint car loan obtained for \$33,236 in August 2015 was \$3,959 past due as of May 2018 when Applicant realized that, under the loan’s repayment terms, he and his

spouse would end up paying \$54,936 for a sedan with a sticker price of less than \$30,000. After speaking with his security manager, he sent a letter to the creditor in early May 2018 indicating that he and his spouse was no longer able to make their \$763 monthly payments. They offered to surrender the vehicle voluntarily with the understanding that they would be responsible for the difference between the sale price for the car at auction and the balance of the loan. They offered to pay \$50 a month toward the deficiency balance. In June 2018, the lender repossessed the vehicle with \$28,886 due (\$3,997 past due) on their loan. After resale, the lender charged off their account for \$17,736. As of February 2019, Applicant and his spouse owed \$19,096 on the debt. Applicant thought he had no further obligation to the creditor because he had paid \$19,838 on the loan, and the creditor gained another \$11,000 to \$12,000 in the auction sale. Additionally, the debt had been charged off. Applicant has made no payments on the charged-off balance as of late September 2019, even though it continues to adversely affect his credit. (GEs 3-4; AEs A, S-T, Z, AA-BB; Tr. 35-40.)

Charged-off auto loan for \$11,972 (SOR ¶ 1.b)

The joint car loan obtained in late June 2013 for \$26,700 became \$1,019 past due in April 2014. The lender repossessed the vehicle around August 2014, and charged off the account for \$25,797. After the vehicle was sold, Applicant thought he and his spouse had no further obligation to the creditor. In 2018, his spouse received a Notice of Debt Cancellation (1099-C) for \$11,973. They included the debt as unearned income on their 2018 income tax return. As of January 2019, the credit bureaus were reporting the debt as \$14,513 paid in settlement. (GEs 1-4; AEs A, Z, AA-BB; Tr. 40-41.)

Vehicle loan past due for \$1,254 (SOR ¶ 1.c)

Applicant's truck loan obtained for \$12,044 in late March 2016 was \$1,664 past due as of March 2018. He missed his loan payments in December 2018 and January 2019 because he wanted to catch up on his utility bills. As of February 2019, his loan was 60 days past due for \$1,290 on a \$3,190 balance. In mid-March 2019, the truck was involuntarily repossessed. A week later, Applicant and his spouse received their income tax refund for tax year 2018. Applicant paid \$2,702 to reinstate the loan and reacquire the truck. In March 2019, he paid \$697 on the loan. As of April 2019, the loan balance was \$560. They paid off the loan in May 2019 and obtained the title to the truck. (GEs 3-4; AEs A-B, E, G, R, AA-CC; Tr. 29, 43-45.) When Applicant and his spouse separated in June 2019, he gave her the truck. (Tr. 29, 45.)

Credit card charged off for \$682 (SOR ¶ 1.d)

As of October 2018, Equifax was reporting on Applicant's credit record that a credit card had been obtained in August 2016 with a \$300 credit limit. The account was charged off in February 2018 for \$682 after nonpayment since November 2017. (GEs 3-4; AE A.) Applicant's spouse's credit report shows that the account was opened individually in her name. (AE Z.) Applicant does not recall opening the account, although he speculated that his spouse may have opened it. As of September 2018, Trans Union was reporting that

Applicant was an authorized user on the account. (AE AA.) At the hearing, the Government conceded that Applicant, as an authorized user on the account, is not legally liable for the debt. (Tr. 31, 46-47.)

Collection debt for \$540 (SOR ¶ 1.e)

Applicant's credit report lists a credit card obtained with a catalog retailer in July 2010 with a \$379 credit limit. The account became delinquent in September 2013. In late March 2014, the creditor closed the account and wrote off a \$540 balance. His spouse opened the credit-card account in his name, apparently without his knowledge. (Tr. 48.) In June 2019, the collection entity holding the debt offered to settle it for a lump sum of \$324, or six monthly payments of \$72, or \$50 per month. (GEs 2-4; AEs A, Q, Z.) There is no evidence the debt has been paid.

Collection debt for \$278 (SOR ¶ 1.f)

A \$278 electric-utility debt from January 2017 was placed for collection in April 2018. As of March 2019, the debt was unpaid. When Applicant and his family relocated in January 2017, he had paid his current bill and was unaware that he owed a balance. He received a notice about a balance in the following months, but did not believe it was accurate. The account was charged off, and he believed at the time that if a debt was charged off or no longer listed on his credit report, it was no longer an issue. (GE 4; AEs A, AA.) Applicant disputes the debt because he believes he had no outstanding obligation when he moved, although he has not contacted the creditor. (Tr. 49-50.)

Collection debt for \$653 (SOR ¶ 1.g)

Applicant purchased a season pass to an amusement park for his family in 2014, opting to make monthly payments over a year's time. After six months, they had only gone to the park one time. He told the creditor that he wanted to cancel the pass, and the cost for the next six months came due. He refused to pay the balance for which he is contractually liable because he felt he had paid enough to cover his family's single visit. In April 2015, a \$653 past-due balance was placed for collection. (GE 3; AE A; Tr. 50-51, 56.) He does not intend to pay the debt. (GE 2.)

Charged-off debt for \$640 (SOR ¶ 1.h)

A credit-card account opened by Applicant in May 2010 with a \$500 credit limit was charged off for \$640 and in collection as of April 2015. Applicant unsuccessfully disputed the debt in September 2018. He told the OPM investigator that the debt was "collected." The debt was still on his credit record as unpaid as of March 2019. (GEs 2-4; AE A; Tr. 51.) Applicant believes he settled with the creditor some time ago (AE A; Tr. 52), but he presented no documentary proof that it has been settled. (Tr. 52)

Credit-card collection debt for \$723 (SOR ¶ 1.i)

Applicant obtained a credit card in March 2010. He stopped paying on the account in May 2011, and a \$675 debt was placed for collection. As of March 2019, the collection balance was \$723. In mid-March 2019, the collection entity offered to settle the debt for \$361 payable in a lump sum by April 30, 2019; in a down payment of \$72 by April 30, 2019, and then \$289 within 30 days; or in three installments of \$120. (GE 3; AE A.) Applicant indicated during his July 2017 OPM interview that his spouse had used his credit for online purchases of items for their home. (GE 2.) There is no evidence that Applicant has made any payments to settle or satisfy the debt.

Collection debt for \$764 (SOR ¶ 1.j)

A wireless telephone debt of \$764 was placed for collection in July 2014. Applicant does not recall opening the account, and he disputed the debt in the summer of 2018 through the law firm retained to clean up his credit report. (GE 3; AE A; Tr. 53-54.) Applicant believes that his spouse could have incurred the debt when they were separated, so sometime between 2011 and August 2012. (Tr. 53.) He presented no documentation to corroborate that belief, but the debt was not on his credit record as of March 2019. (GE 4.)

Collection debt for \$2,603 (SOR ¶ 1.k)

In December 2014, a collection entity acquired a \$2,603 debt for collection. As of March 2016, the credit bureaus were reporting the debt as being owed to a telecommunications company. When he answered the SOR, Applicant did not recall opening the account, and he indicated that he disputed the debt in the summer of 2018. (GE 3; AE A.) The debt was not on his credit record as of March 2019. (GE 4.)

Charged-off debt for \$115 (SOR ¶ 1.l)

A mail-order charge account in Applicant's name, which was opened in November 2010 and apparently used by his spouse, was charged off in March 2011 for \$70. As of October 2013, the balance on the debt was \$115. (GE 3; AEs A, J.) There is no evidence of any payments to settle or satisfy the debt.

Charged-off debt for \$139 (SOR ¶ 1.m)

A charge account opened in Applicant's name in October 2010, was charged off for \$139. As of October 2013, the account had no activity since March 2011. (GEs 2-3; AE A.) There is no evidence of any payments to settle or satisfy the debt.

Charged-off debt for \$139 (SOR ¶ 1.n)

Applicant's spouse incurred a \$139 debt in his name. Applicant told the OPM investigator that the debt was incurred for magazines, and that his spouse gave his name

for information. As of October 2013, the account was past due \$70 on a balance of \$139. (GEs 2-3; AE A.) There is no evidence of any payments on the debt.

Charged-off debt for \$1,104 (SOR ¶ 1.o)

In November 2010, Applicant obtained an installment loan of \$4,531, to be repaid at \$137 per month, for furniture and a computer. As of October 2014, he owed a collection balance of \$1,104 on the loan. In April 2015, he paid \$450 to settle the debt. (GEs 2-3; AEs A, C; Tr. 54-55.)

Collection debt for \$447 (SOR ¶ 1.p)

A credit-card company placed a \$300 debt from March 2011 for collection. As of December 2013, the collection balance was reportedly \$447. He first learned about the debt in October 2017. (Tr. 59-60.) Applicant told the OPM investigator that his spouse had used the credit card for shopping and holiday gifts. He admitted that he had stopped making payments on the account. (GEs 2-3.) There is no evidence of any payments toward the delinquent balance.

Collection debt for \$535 (SOR ¶ 1.g)

A credit-card account used by Applicant for household goods referred a \$300 debt from February 2011 for collection. As of January 2014, the collection balance was \$535. Applicant surmised in response to the SOR that his spouse may have obtained credit in his name. However, he told the OPM investigator that he had used the account for common household goods and that he had defaulted on his payments due to a bad debt-to-income ratio. (GEs 2-3; AE A.) There is no evidence of any payments toward the delinquent balance.

Applicant and his spouse filed joint income tax returns for tax year 2018. According to their federal return, his spouse was unemployed that year. On total income of \$86,839 (\$73,551 in wages, \$1,315 taxable income from retirement/pension assets, and \$11,973 in cancelled debt), they overpaid their federal income taxes by \$3,157. (AE A.)

Applicant's take-home pay from his defense contractor job is \$1,717 – \$1,737 every two weeks. (AE V; Tr. 62.) He receives service-connected disability income of \$566 per month. (AE W.) As of March 2019, he had nine open credit cards with an aggregate balance of \$6,623 with scheduled repayments totaling \$282 monthly. He was making timely payments of \$100 per month on a secured installment loan obtained for \$3,174 in March 2017. As of March 2019, the balance on the loan was \$2,148. Some \$39,847 in deferred federal student loans and \$17,315 in private student loans were on his credit record. (GE 4; AEs A, AA; Tr. 66.) In August 2019, he reduced his storage expenses by about \$30 per month. (AE P; Tr. 82.) As of October 2019, Applicant's monthly expenses and debt payments totaled approximately \$3,378, which included \$1,310 for rent, \$246 for cell phones, \$599 for his car payment, \$99 for Internet service, \$220 for electricity, \$132 in storage space rentals, \$207 in insurance for two vehicles, \$29 for renter's insurance,

approximately \$330 in credit-card payments, and \$100 for a vacuum. (AE Y.) Applicant was persuaded by his spouse to finance the purchase of a vacuum for \$1,800 that he estimates will end up costing \$3,000. He has made payments to reduce the debts to \$700. (Tr. 80.)

Applicant testified that he has always had financial issues because something comes up, such as the SOR and his marital separation, just as he begins to “see the light at the end of the tunnel.” (Tr. 27-28.) He has no savings and about \$182 in his checking account. (Tr. 69.)

When Applicant and his spouse separated in June 2019, she took their camper and moved with her two daughters and their two children to another state. His spouse currently lives in the camper. (Tr. 42-43.) His stepdaughter had obtained a truck for \$500 down on which she had been making \$98 weekly payments with the intention of obtaining her driver’s license. (Tr. 83.) His spouse left him with his stepdaughter’s truck, which he traded in the vehicle for a new car in August 2019, obtaining a loan for \$28,000 to be repaid at \$599 per month. (Tr. 64-65, 75-76.) He explained that a new vehicle was his only option because of his poor credit. With his car payment and other obligations, he has been unable to make payments on his delinquencies. (Tr. 29-30, 32.) He drives for ride-hailing companies for extra income to make his car payment. He sends his spouse at least \$200 a month, covers the cell phone bill, and his spouse’s and children’s medical insurance. Since his spouse left him, his electric bill has declined to about \$200 a month. (Tr. 72-75.) Applicant owed \$527 in state income taxes for tax year 2018. (Tr. 84.) He paid the debt on October 7, 2019. (AE X.)

Applicant’s foreman for over a year on a modernization project attests that Applicant was selected to perform quality-assurance duties in addition to his daily electrical work because of his trustworthiness and ability to ensure safety was never compromised. Applicant’s work ethic was impeccable, and the foreman indicated that he would take Applicant on any project that he manages. (AEs A, K.) A design-build specialist with Applicant’s current employer, who worked with Applicant on different projects for about eight to ten months, attests that Applicant “did everything that was asked of him and expected of him.” Applicant to be a team player who is well-respected by his peers. They currently work on the same project, where Applicant is doing “a great job.” (AEs A, L.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant’s eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior,

these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Section 7 of EO 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F: Financial Considerations

The security concerns about financial considerations are articulated in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

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

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

Applicant's credit reports of March 2016 and December 2018, and his admissions on his SF 86, during his July 2017 interview, and in his SOR response, establish a record of financial delinquency triggering three disqualifying conditions under AG ¶ 19:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant defaulted on two vehicle loans (SOR ¶¶ 1.a and 1.b), which have been charged off. A truck financed by the loan in SOR ¶ 1.c had been repossessed before he used his income tax refund to pay his delinquency and reacquire the truck. Applicant obtained a season pass for his family to an amusement park and then defaulted on his contractual liability for \$653 (SOR ¶ 1.g). When Applicant and his family relocated in January 2017, he reportedly owed \$278 for electricity services (SOR ¶ 1.f). He claims that he paid all balances owed to the utility, but he provided no evidence to show that the debt is invalid or has been paid. A loan obtained for \$4,531 for furniture and a computer in 2010 was placed for collection for \$1,104 (SOR ¶ 1.o).

Of the some \$3,960 in consumer credit-card delinquencies on his credit record, Applicant has no legal liability as an authorized user for the \$682 debt (SOR ¶1.d). Applicant admitted that he, or his spouse using his credit, incurred the debts in SOR ¶¶ 1.e, 1.h-1.i, 1.l-1.n, and 1.p-1.q, totaling \$3,278.

Applicant disputed through a law firm in the summer of 2018 two wireless-telephone debts in collection for \$764 and \$2,603 since 2014, although he speculates that his spouse could have incurred the \$764 debt while they were separated from 2011 to 2012. Neither debt appears on his more recent credit reports. While debts may be dropped from a credit report when they are no longer legally collectible or for other reasons unrelated to their validity, a single listing by a collection entity on a credit report from three years ago is not

enough to meet the Government's burden of establishing controverted allegations under Directive ¶ E3.1.14.

Applicant bears the burdens of production and persuasion in mitigation. One or more of the following conditions under AG ¶ 20 may apply in whole or in part:

(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) is not established. Some of the debts became seriously delinquent five or more years ago, such as the credit-card debts in SOR ¶¶ 1.1-1.n and 1.p-1.q; the car loan in SOR ¶ 1.b; and the installment loan in SOR ¶ 1.o. However, several of the debts had not been resolved as of the close of the record in October 2019. The DOHA Appeal Board has held that "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)).

Applicant's finances have been negatively impacted by some circumstances outside of his control over the years. Applicant and his spouse were separated from 2011 to August 2012. He and his spouse defaulted on their vehicle loan obtained in June 2013 because his spouse had reduced her work hours to return to school. His spouse's accident in 2015 and the temporary loss of her income because she was injured in the accident were unfortunate and unforeseen. Applicant was laid off in December 2016. Although he had a job lined up with his current employer at an annual salary of \$50,000, relocation was at his expense. He drained his bank and retirement accounts to cover moving expenses,

including deposits for housing and utilities. In May 2018, he accepted a position in his current locale, which has a higher cost of living than his previous area. Since his latest marital separation in June 2019, Applicant has been sending his spouse at least \$200 a month for her support.

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)). Applicant has made some financial decisions over the years, which have contributed to, if not caused, financial stress. In June 2013, he and his spouse purchased a sedan, obtaining a loan of \$27,600 (SOR ¶ 1.b). In July 2013, they then purchased a 2007 model-year truck, financed for \$20,001. With two vehicle payments, they began to struggle financially. The vehicle loan obtained in June 2013 for \$26,700 was charged off in August 2014 for \$25,797. Applicant and his spouse traded in the truck purchased in July 2013 for a new car in August 2015, taking on a monthly obligation for \$763. In March 2016, Applicant took on \$460 a month in loan repayment for a truck "needed" to tow a 26-foot camper trailer and a 16-foot car hauler that he owned. He struggled to make the payments on time for the truck from the start, and while he eventually reacquired the truck after it had been repossessed, he and his spouse voluntarily surrendered the 2015 model-year car because they could not afford the payments. Several delinquent accounts went unpaid as Applicant and his spouse were buying and trading in vehicles over the years, and purchasing some items difficult to justify given their financial difficulties, including a vacuum for \$1,800 that will end up costing him about \$3,000. AG ¶ 20(b) does not mitigate his questionable financial decisions.

AG ¶¶ 20(c) and 20(d) are partially established. Neither Applicant nor his spouse made any effort to repay the \$11,972 deficiency balance on their June 2013 vehicle loan (SOR ¶ 1.b), so AG ¶ 20(d) does not apply to that debt. However, the debt is no longer owed. The debt was cancelled in 2018, and Applicant and his spouse reported the cancelled debt on their joint income tax return for tax year 2018. AG ¶ 20(d) applies to the truck loan in SOR ¶ 1.c, which Applicant paid off in May 2019, and the installment loan debt in SOR ¶ 1.o, which he settled for \$450 in April 2015. He has no repayment plans in place for his remaining delinquencies, including the \$19,096 owed on loan for the repossessed 2015 model-year sedan (SOR ¶ 1.a); the \$278 electric utility debt (SOR ¶ 1.f); the \$653 collection debt for the amusement park pass; or on the credit-card delinquencies (SOR ¶¶ 1.e, 1.h-1.i, 1.l-1.n, and 1.p-1.q). Neither AG ¶ 20(c) nor AG ¶ 20(d) applies to those debts. There is no evidence Applicant has had any financial counseling.

AG ¶ 20(e) applies to the \$682 charged-off credit-card debt (SOR ¶ 1.d), which is his spouse's responsibility. Applicant was only an authorized user on the account. AG ¶ 20(e) also applies to the alleged wireless telephone debts in SOR ¶¶ 1.j and 1.k because the evidence falls short of establishing that they are valid debts for which Applicant bears some legal liability. As for those debts incurred by Applicant's spouse using his credit,

Applicant has not disproven his responsibility for repayment. AG ¶ 20(e) does not apply to those debts.

The Appeal Board has held that an applicant is not required to establish that he has paid off each debt in the SOR, or even that the first debts paid be those in the SOR. See ISCR Case No. 07-06482 (App. Bd. May 21, 2008). Yet, the Appeal Board recently reiterated in ADP Case No. 17-0063 (App. Bd. Dec. 19, 2018) that “an applicant must demonstrate a plan for debt repayment, accompanied by concomitant conduct, that is, conduct that evidences a serious intent to resolve the debts.” Applicant has not demonstrated a track record of timely payments on several of his delinquencies. Even assuming that he believed he had no further obligation on those debts that had been charged off, he would have had reason to question that belief once he received the SOR in March 2019. He was offered settlement terms by one creditor (SOR ¶ 1.i) in March 2019, and there is no evidence that he made any payments to settle that debt. He has made no progress toward resolving the \$19,096 car-loan deficiency, or the \$278 electric utility debt, even though they are still on his credit report. Applicant demonstrated some financial responsibility by budgeting for his expenses, lowering his monthly storage fees by \$30 in August 2019, and paying his income tax debt for 2018 in October 2019. He has been earning extra money to ensure that he can make his \$599 monthly car payment. However, he has little to no cash assets (savings and checking deposits) to cover any unexpected expense, even with his service-connected disability income. He appears to have no intention to repay the past-due balances for the car loan, amusement park pass, or those credit-card debts incurred by his spouse in his name. Concerns about his financial situation and his judgment persist.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of his conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual’s age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Some of the adjudicative process factors were addressed under Guideline F, but some warrant additional comment. For the most part, Applicant has been consistently employed. He and his spouse together or individually incurred substantial debt beyond their ability to repay on their household income from employment and Applicant’s disability income.

Security clearance decisions are not intended as punishment for past specific conduct. The security clearance assessment is a reasonable and careful evaluation of an applicant's circumstances and whether they cast doubt upon his judgment, self-control, and other characteristics essential to protecting national security information. Applicant presented positive character references from two co-workers attesting to his excellent work performance and dedication. Yet, 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 ongoing disregard of some known delinquencies is inconsistent with the good judgment required to hold a security clearance. 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.

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
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b-1.d:	For Applicant
Subparagraphs 1.e-1.i:	Against Applicant
Subparagraphs 1.j-1.k:	For Applicant
Subparagraphs 1.l-1.n:	Against Applicant
Subparagraph 1.o:	For Applicant
Subparagraphs 1.p-1.q:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Elizabeth M. Matchinski
Administrative Judge