



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 19-01234
)	
Applicant for Security Clearance)	

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

03/31/2020

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant received non-judicial punishment in 2006 for fraudulent activity, false statement, impersonation, and unauthorized wearing of a military uniform. Doubts about his rehabilitation of the personal conduct concerns persist because he was not candid or credible in his explanation of the 2006 offenses. He has a history of financial delinquency that is not fully mitigated. Clearance eligibility is denied.

Statement of the Case

On October 10, 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, and Guideline E, personal conduct. The SOR explained why the DOD CAF was unable to find it clearly consistent with the national interest to grant or continue security- clearance eligibility for him. The DOD CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for*

Access to Classified Information or Eligibility to Hold a Sensitive Position (AG) effective within the DOD on June 8, 2017.

On November 11, 2019, Applicant responded to the SOR allegations and requested a decision on the written record in lieu of a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On December 10, 2019, the Government requested a hearing pursuant to ¶ E3.1.7 of the Directive. On December 16, 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 December 30, 2019, counsel for Applicant entered his appearance. On February 3, 2020, I scheduled a hearing for March 4, 2020.

At the hearing held as scheduled, 10 Government exhibits (GEs 1-10) and 13 Applicant exhibits (AEs A-M) were admitted in evidence without any objections. Applicant testified, as reflected in a transcript (Tr.) received on March 12, 2020. At Applicant's request, I held the record open after the hearing until March 20, 2020, for additional documentary exhibits from Applicant. On March 13, 2020, Applicant submitted through his counsel four exhibits (AEs N-Q), which were accepted into the record without objection. On March 20, 2020, Applicant submitted three additional documents, which were entered into the record as AEs R-T without any objection.

Summary of Pleadings

The SOR alleges under Guideline F that, as of the October 10, 2019 SOR, Applicant was \$2,381 past due on a vehicle loan with an \$80,111 balance (SOR ¶ 1.a), and that he owed collection debts of \$21,524 (SOR ¶ 1.b); \$19,585 (SOR ¶ 1.c); \$777 (SOR ¶ 1.d); \$19,566 (SOR ¶ 1.e); \$456 (SOR ¶ 1.f); and \$328 (SOR ¶ 1.g). Under Guideline E, Applicant is alleged to have received non-judicial punishment and been reduced in rank in 2006 for fraud, forgery, making a false statement, impersonation, and unauthorized wearing of a military uniform (SOR ¶ 2.a). Additionally, the SOR alleges under Guideline E that Applicant made a false statement to a mortgage consultant in 2017 when he claimed that he had only one student loan, which had been paid in full, when he had a student loan in collection (SOR ¶ 2.b.).

Applicant submitted a detailed response with documentation, including a chronology of events that led or contributed to financial hardship. He denied that he was delinquent on the vehicle loan alleged in SOR ¶ 1.a as of October 10, 2019. He indicated that the student loan in SOR ¶ 1.b was listed fraudulently on his credit record. Regarding the debt in SOR ¶ 1.c, Applicant admitted that he owed rent for an apartment for terminating his lease prematurely in February 2016, but he had not paid it because he was contesting the amount claimed by his creditor. Applicant denied the debt in SOR ¶ 1.d, which was for rented cable and modem equipment that he said he returned late. He asserted that the debt has been resolved. Applicant denied the debt in SOR ¶ 1.e, and claimed that the named collection entity fraudulently tried to collect a student loan removed from his credit report, in violation of the Fair Credit Reporting Act and fair debt collection practices. Applicant explained that the debt in SOR ¶ 1.f was for Internet equipment at his marital

residence, which has been returned, so the balance should be around \$200. He denied the insurance debt in SOR ¶ 1.g because he paid it, albeit after he had fallen behind on the account.

Concerning Guideline E, Applicant admitted the non-judicial punishment alleged in SOR ¶ 2.a, but claimed he accepted after it was explained to him by the assigned Judge Advocate General (JAG) officer that it would not impact his civilian career as a court-martial would have done. He denied that he was found guilty and stated, "All subsequent charges that were tacked on were the result of an obsessive 1SG." He admitted that he had worn a sergeant uniform when he should not have, but maintained that he "was on the list to be promoted at any time." Applicant stated that he "did NOT commit Forgery, Fraud, or make a False Statement," and that had he known that "someone would deviously align this Article 15" to his permanent duty record, he would have requested a court-martial where evidentiary rules apply. Applicant requested that the non-judicial punishment not be considered because it was not an admission of guilt and was beyond the scope of the SF 86. Applicant denied the allegation that he made a false statement to a mortgage consultant in 2017 (SOR ¶ 2.b), and explained that a fraudulent listing on his credit report made it appear that he had two student loans.

Findings of Fact

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

Applicant is a 36-year-old high school graduate with about three semesters of college. He is currently in divorce proceedings with his second wife. He has been working as a senior program manager servicing the Air Force under a contract between a staffing company and a defense contractor since August 2019. (Tr. 94.) His continued employment is contingent on a favorable adjudication of his clearance eligibility. (GE 1; AEs I, N-O.)

Applicant has a service-connected 20% disability rating with the Department of Veteran's Affairs (VA). (Tr. 87.) He served on active duty in the United States military with a secret clearance under the occupational specialty of military police from January 2002 to January 2007. From March 2003 through December 2003, he was deployed to Iraq and then Afghanistan. While serving at the rank of specialist (E-4) in South Korea, Applicant was accused in January 2006 with fraud, forgery, and making a false statement by producing various military school certificates allegedly fraudulently obtained regarding combat action badges, airborne school, air assault school, Special Forces training, and lateral appointment to corporal. He was also accused of impersonating a non-commissioned officer and with unauthorized wearing of a military uniform for wearing sergeant (E-5) rank when he was an E-4. Applicant admitted to military investigators that he had worn sergeant rank, but he denied altering documents for his enlisted records. He explained that he had taken an assignment as a warfighter team leader and was informed in August 2006 that he had made points to be promoted to sergeant. The investigation revealed that Applicant obtained a new identification card showing sergeant rank, but he did not have orders showing his promotion. (GE 6.) Applicant did not request a trial by

court-martial. He was found to have committed offenses with respect to all five allegations in a non-judicial punishment proceeding on September 18, 2006. His record was flagged with a bar to reenlistment, and he was reduced in rank to private (E-1), ordered to forfeit pay of \$636 per month for two months, given 45 days of extra duty, and placed on restriction for 45 days. (GEs 7-8.) His case was referred to the military criminal investigation command, who found probable cause to believe that Applicant committed the offenses, including that he had presented altered or false documents to the Personnel Services Battalion. (GE 6.)

Applicant appealed the punishment, in part asking that he be allowed to separate from the military at the rank of E-3, the minimum rank required for him to report to a Special Forces command in the National Guard in January 2007. Applicant also requested a reduction to \$300 a month (\$600 total) in forfeited pay because he had financial issues caused by a divorce, and he had just enrolled at a state university. He asked that he be given only 14 days of restriction and 14 days of extra duty because he needed surgery and would not have enough time to complete the 45 days after convalescent leave before his ETS date of November 22, 2006. Applicant asserted on appeal of his non-judicial punishment that he “never did anything with wrongful intention.” Applicant presented some character references from soldiers attesting to his leadership. Those soldiers, who acknowledged that Applicant made “a mistake,” regarded his punishment as too harsh. (AE G.) Applicant was apparently unsuccessful in his appeal as his DD-214 shows that he was separated from active duty at the rank of E-1 in January 2007. He was granted an honorable discharge under the separation code of “LBK” (involuntary discharge). (AE G.)

Applicant now denies that he committed any fraudulent activity, to include forgery and making a false statement, and he attributes those charges to an “obsessive” first sergeant, even though the Commander’s Report of Disciplinary or Administrative Action indicates that he pled “guilty” to all five of the alleged offenses. (GE 7.) It is noted that to receive a reduction from specialist (E-4) to private (E-1) and the other serious punishments imposed under Article 15 of the Uniform Code of Military Justice, the imposing commander must be a field grade commander, not a noncommissioned officer. Applicant explained that the non-judicial punishment was for him driving a rented vehicle in Korea, in violation of the Status of Forces Agreement for anyone under the E-5 rank to drive a private vehicle in Korea. He presented a record of Article 15 proceedings dated September 18, 2006, regarding his wrongful driving without authorization between July 1, 2006, and July 31, 2006, misconduct substantiated by a staff sergeant (SSG), who swore that he witnessed Applicant get behind the wheel of a privately-owned vehicle in late July 2006, which was against the Status of Forces Agreement for enlisted personnel of Applicant’s rank or lower to operate a private vehicle in Korea. The SSG attested that Applicant had told him that a colonel had authorized the vehicle under an exception because he needed the vehicle for training purposes. (AE G.) Records submitted by the Government (GEs 6-8) show that the punishment, include the reduction in rank to E-1, was imposed for the misconduct in January 2006.

When Applicant responded to the SOR, he admitted that he wore sergeant rank when he should not have, but asserts he had passed his E-5 Board and was on the list to

be promoted at any time. He claimed without any corroborating documentation that his Leave and Earning Statement (LES) reflected his rank as sergeant, but acknowledged that he did not have formal orders of that rank. He attributed his “mistake” to being a “young Solider that was too excited.” Applicant maintained that if he had known that the administrative action would impact his civilian career, he would have chosen a court-martial proceeding, where he could have contested the allegations with evidence and legal representation. He explained that he accepted the non-judicial proceedings because those whom he trusted most told him it was not worth going through a court-martial. (Answer; Tr. 77-78.)

In his appeal of the non-judicial punishment, Applicant indicated that he had just signed up as a student at a university. (AE G.) Applicant instead attended a different state college for a semester and a half after he was discharged from the military. (Tr. 105.) He withdrew from the school in May 2008. (AE H.) The credit reports in evidence (GEs 3-4, 10) and a record from a loan servicer (AE H) show two student loans obtained in December 2006: a private student loan for \$16,721 (SOR ¶ 1.a) and a federal Stafford student loan for \$3,500 (not alleged), both in default. (AE H.) He contests the validity of the private student loan (SOR ¶ 1.a), asserting that he had only the one \$3,500 student loan. (Tr. 105.) He presented information about the \$3,500 loan indicating that it was placed in forbearance in October 2009, January 2014, and June 2015. He defaulted on a \$1,161 balance in December 2016, even though his repayment term was under \$50 a month. (Tr. 106.) He paid \$1,280 to resolve the debt on March 6, 2017, after his loan had been placed for collection and his default reported to the credit reporting agencies. (GEs 3-4 10; AE H.)

Applicant reportedly was self-employed as a yacht captain from January 2007 to December 2007 while attending college. His contract was not renewed, and he listed on an August 2017 Questionnaire for National Security Positions (SF 86) that he was unemployed from January 2008 to August 2008. (GE 1.) His resume discrepantly indicates that he worked as a contract communications engineer for a company that provided communications expertise to the U.S. military and private aircraft companies from August 2007 to February 2009. (AE I.)

Applicant reports that he then worked as an information technology project manager for an airline until September 2011. (AE I.) He was self-employed from September 2011 to November 2013, when he relocated for a vice president position with a “partner company.” (GE 1; AE I.)

In June 2015, Applicant began renting an apartment at \$2,380 per month (SOR ¶ 1.c), under a 12-month lease. (AE C.) His then employer had financial issues and reduced his pay significantly. Applicant could no longer afford his rent, and he advised the property management office that he needed to terminate the lease early. When he vacated the apartment at the end of February 2016, he thought he had a verbal agreement from the management company and did not have to pay the remainder of the lease, even though his lease terms required him to give 60-day notice of termination and provided for a penalty of two months’ rent for early termination. (Answer.) In May 2016, he was billed \$8,111 by

the property management company, which included a penalty of one month's rent. (AE C.) In August 2016, his account was placed for collection. (GE 3.)

Applicant reported no outstanding financial delinquencies on his August 2017 SF 86 for eligibility for a secret clearance to work as a consultant for an information technology company. (GE 1.) He asserted in response to the SOR that he did not learn about the apartment debt (SOR ¶ 1.c) before approximately September 2017, when he applied for a home loan. (Answer.) However, May 2016 the billing statement, which he provided in evidence, suggests that he knew about the debt well before September 2017.

Applicant and his wife married in October 2017, after cohabiting since March 2016. (GE 1.) While applying for a mortgage to purchase a home, Applicant and his wife learned that a creditor was reporting that he had defaulted on a student loan obtained in December 2006, then with the creditor identified in SOR ¶ 1.e. On September 9, 2017, Applicant and his wife informed a mortgage consultant, in writing, that his "original and only student loan was paid in full the beginning of this year." They explained that the loan (i.e., his federal student loan for \$3,500) went into collections "for a couple of months many years ago and was sold to multiple creditors." They asserted that the listing of a \$19,566 collection debt (SOR ¶ 1.e) on his credit record was fraudulent. (GE 5; AE H.) Applicant denies that he made a false statement to the mortgage consultant, explaining that his lone student loan was only in default for one month before he paid it off. (Tr. 79.)

Within a few weeks of their wedding, Applicant and his wife closed on a home near her family in October 2017. They purchased the property in part with a VA-backed loan of \$379,000, requiring repayment at \$2,797 per month. Applicant's income was about \$50,000 annually while his wife earned "over \$130,000" annually. (Tr. 56, 104.) During their marriage, she worked as a physician in her father's medical practice. (Tr. 56, 60.) Applicant and his wife were paying on a truck loan obtained in January 2016 for \$71,869. The account was past due in September 2016, and again from December 2016 through February 2017. (GE 3; Tr. 120-121.) That loan was paid off in December 2017 when Applicant bought a 2018 Ford 150 truck for himself with a loan of \$83,072, to be repaid at \$1,415 a month. (AE A.) The loan balance was so high because he rolled the debt remaining on his spouse's and her sister's vehicles into his new loan. (Tr. 62, 103.)

A check of Applicant's credit on November 14, 2017, listed several collection balances: \$19,566 defaulted student loan balance (SOR ¶¶ 1.b and 1.e, same debt); \$19,585 for breaking his apartment lease in 2016 (SOR ¶ 1.c); \$777 from June 2016 in dispute with a telecommunications company (SOR ¶ 1.d); \$456 for cable television services (SOR 1.f); and \$328 owed to an insurance company since April 2014 (SOR ¶ 1.g). Applicant or his spouse was making timely payments on three credit-card accounts with balances totaling \$4,019. (GE 3.)

In mid-March 2018, Applicant started a new job as a contract program manager supporting the U.S. Army. He indicated in response to the SOR that he was "so close to being financially stable" in the spring of 2018. Yet, available credit information indicates that Applicant and his wife began falling behind on their mortgage in April 2018. The

account information for his new truck loan (SOR ¶ 1.a) shows that his payments have been chronically late since February 2018, and he has been regularly assessed late fees. (AE A.)

Applicant and his wife legally separated in early July 2018. (Tr. 56, 94.) In Applicant's July 9, 2018 petition for divorce, he asked the court to equitably divide, distribute, or assign the marital property between him and his wife without regard to her marital misconduct. (AE N.)

On August 6, 2018, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). He indicated that he would not be responsible for any of the marital debt. When confronted about the adverse credit entries on his credit record, Applicant admitted that he had a student loan that had been in default for \$1,161, but that he then paid it. Applicant denied any knowledge of the \$328 insurance debt (SOR ¶ 1.g) and stated that his account was current. Applicant asserted that the cable services debt for \$456 (SOR ¶ 1.f) was his wife's responsibility. When asked about the student loan with a listed high credit of \$16,721 (SOR ¶ 1.b), Applicant did not dispute that he had obtained a student loan in December 2006, or that he had fallen behind because he had not realized that the payments were being drawn from his account past their due dates. Apparently thinking of his federal student loan, he asserted that when the matter was brought to his attention, he brought the account current and stated that he could provide documentation of its satisfaction. Applicant recognized the \$777 telecommunications debt (SOR ¶ 1.d), but stated that he was in the process of disputing the charge because the account was in his wife's name. Applicant stated that he was also disputing the charges owed a former landlord (SOR ¶ 1.c). (GE 2.)

The divorce proceedings put a "huge strain" on Applicant's finances. He testified that he had to pay his divorce attorney around \$22,700, but has paid all but \$1,000 of her fees. (Tr. 121.) On October 1, 2018, his divorce attorney billed him for \$10,000 to replenish his trust account for legal matters. (AE P.)

In December 2018, Applicant moved near his family into a family-owned house, and he listed the marital property for sale. He did not make the mortgage payments, and his and his spouse's mortgage lender eventually initiated foreclosure of their mortgage loan. In May 2019, Applicant refinanced his truck loan to remove his ex-wife's name from any legal responsibility for paying for his truck, as required by the terms of his pending divorce. His truck payment on his new loan was 13 days late for June 2019, 14 days late for July 2019, 14 days late for August 2019, 19 days late for September 2019, and 10 days late for October 2019 (SOR ¶ 1.a) (AE A), although his account was reported as current to the credit bureaus. (GE 10.)

In August 2019, Applicant began his current job at an hourly rate of \$52.13 per hour. (AEs I, Q; Tr. 55.) He used his remaining savings to cover the costs of his relocation. (Answer.)

As of October 2019, Applicant's credit report showed that the mortgage on his and his wife's marital residence was in foreclosure proceedings with a \$408,876 balance. A private student loan for \$16,721 had been charged off as a bad debt after no payments since June 2016 (SOR ¶ 1.b), but it was also reported that his dispute about the debt had been resolved. (GE 10.) On November 8, 2019, Applicant and his wife sold their marital residence for \$350,000 plus fees for a total of \$380,838 from the buyer at settlement. Some \$327,673 went to pay off their loan on the house. (AE K.)

On October 10, 2019, the DOD CAF issued an SOR to Applicant, in part because of the delinquent accounts on his credit reports. Available credit information showed the following with respect to the SOR accounts:

Vehicle loan past due for \$2,381 on an \$80,111 balance (SOR ¶ 1.a)

Payment records for the truck loan indicate that since December 2017, Applicant had been assessed \$1,427.32 in late charges. His payments have been consistently late. After making a late payment for October 2019, his loan had a principal balance of \$68,863. (AE A.) Applicant's explanation for being chronically late is that he has had to pay his divorce attorney, and she recommended that he pay debts only when she advised him to pay. (Tr. 101.) Applicant asserted that he is now caught up in his payments, because in December 2018, he had his lender add one month to the end of his loan. (Tr. 101-103.)

Student loan for \$21,524 in collection (SOR ¶ 1.b, same debt as SOR ¶ 1.e)

The credit bureaus have consistently reported that Applicant obtained a joint private loan in December 2006. (GEs 3-4, 10.) Applicant told the military in late fall 2006 that he had just signed up as a full-time student at a university. He may have obtained a private student loan for that institution, which he ultimately did not attend, although there is no evidence in this regard. As of July 2017, the loan was reportedly charged off and in collection for \$16,721. (GEs 3-4.) In August 2019, the creditor in SOR ¶ 1.b placed a \$22,608 debt for collection. (GE 10; AE B.) The creditor in SOR ¶ 1.b is a student-loan trust entity with a history of using service providers to file lawsuits to collect defaulted student loans barred from collection under the applicable statute of limitations or without documentation to prove that the person owed the debt. (GE 9.) On October 1, 2019, a collection entity informed Applicant that the creditor was willing to accept \$9,129 in settlement of a \$22,823 balance. On November 4, 2019, Applicant requested validation of the debt (AE B), which was still on his credit record as an outstanding collection debt. (GE 10.) Applicant had received no response to his correspondence as of March 2020. He asserts that the debt is fraudulent, but he provided no documentation showing the debt has been removed from his credit record. (Tr. 63, 108.) Applicant has retained a lawyer to assist him with regard to whether to file a lawsuit against the student-loan trust entity, but it has yet to be shown if legal action against the trust entity by the Consumer Financial Protection Bureau (CFPB) applies to him. (Tr. 108.)

Apartment rent collection debt for \$19,585 (SOR ¶ 1.c)

Applicant prematurely terminated his lease for an apartment in February 2016 when he could no longer afford the rent. (Answer.) At his hearing, he testified that for five or six months in 2016, he was not paid because his then employer lost contracts, and he had no income apart from his VA disability. (Tr. 64-65, 91-93.) On May 4, 2016, he was billed \$8,111 by his former landlord for back rent and utilities. In August 15, 2016, his account was placed for collection. On September 27, 2019, a collection entity informed Applicant that his creditor would be willing to settle his debt balance of \$19,584 for \$9,792. (AE C.) On November 1, 2019, Applicant contacted the collection entity for another offer. He asserts that he was told the creditor wanted the full balance. Applicant verbally asked for a verification of the debt. (Answer.) On December 15, 2019, Applicant sent a letter requesting validation of the debt. (AE L.) Applicant testified that he is solely responsible for any balance owed because his wife (then fiancée) was not on the lease (Tr. 65), but also that he is willing to split a bill of \$6,000 with his estranged wife on their divorce settlement. (Tr. 95-98.) Applicant's October 2019 credit report states "Account information disputed by consumer, meets FCRA requirements." (GE 10.) In response to the Government's position that the debt appears to be a legitimate debt that meets the Fair Collection Requirements Act, Applicant testified that he mistakenly disputed the debt under an incorrect criteria and should have disputed the amount owed. (Tr. 100.) As of March 2020, Applicant had made no payments on the debt. Should he receive no response from the creditor to his request for verification, he plans to "take the legal actions appointed to [him] as a consumer." (Tr. 118.)

Telecommunications company debt for \$777 in collection (SOR ¶ 1.d)

A \$777 debt with a telecommunications company from January 2016 was in collection as of December 2018. (GE 4.) As of October 2019, the debt was on his credit record as an unpaid collection balance. (GE 10.) Applicant submits that the credit entry should have been removed from his credit record some time ago because the debt was for old rented equipment that he returned late. He presented in evidence an October 2019 billing statement showing that he was an existing customer of the creditor and had just reduced his monthly charges from \$235 to \$124 by bundling services. (AE D.) While that account was current, the account bears a different number than that reported for the debt in collection. (GE 10.) On November 4, 2019, Applicant sent a letter to the collection entity requesting validation of the debt. (AE D.)

Cable services debt for \$456 in collection (SOR ¶ 1.f)

As of October 2017, a cable debt of \$456 was in collection. (GE 3.) Applicant explained that his wife did not turn in equipment from their marital residence on time. (Tr. 67.) As of November 2019, Applicant was being pursued for a collection balance of \$710 by another cable services company, which Applicant asserts was for the debt in SOR ¶ 1.f. (AE E.) He provided no documentation for his claim that the two companies had "some sort of entity agreement." On November 4, 2019, Applicant sent a letter to the collection entity requesting validation of the debt. On December 17, 2019, he received a response from the

collection entity pursuing him for the \$710 indicating that his account had been closed and returned to the creditor. (AE E.) There is no evidence that the \$456 debt has been paid or that it is fraudulent, although it had been removed from his credit record as of December 2018. (GE 4.) Applicant claims that the debt was removed from his credit because his wife added his name to the account after the fact. (GE 4; Tr. 71-73.) Applicant testified that the debt is in dispute. (Tr. 77.)

Insurance debt for \$328 in collection (SOR ¶ 1.g)

Applicant incurred the debt due to financial hardship caused by his divorce, but he paid the debt in full. (Tr. 74.) The alleged debt does not appear on Applicant's credit report as of October 2019. (GE 10.) Records of Applicant's account with the insurance provider show that, after a \$205 payment in late December 2018, he renewed his policy at a cost of \$1,028 for six months. He set up \$169 automatic payments that were declined. His policy was cancelled in late March 2019 for nonpayment with \$567 owed. After a payment cleared in late March 2019, his coverage was reinstated. In July 2019, his policy was renewed. After a payment of \$252 in late September 2019, he was billed \$463 in October 2019. (AE F.)

As of October 2019, Trans Union was reporting additional debts not listed in the SOR, including a collection debt of \$912 from September 2018 that was charged off in May 2019 by an online home furnishings retailer. (GE 10.) As of November 2019, Applicant was disputing the debt on the basis that his wife opened it for furniture for their marital household, although he indicated that he would pay it if verified. (Answer.) A letter from the collection entity indicates that Applicant was the account holder and that he paid \$273 on March 4, 2020. (AE S.) Trans Union was also reporting that a \$6,194 debt, on an account opened in December 2014, had been charged off in June 2015 after no payments since January 2015. (GE 10.) Applicant testified that it was a marital debt for furniture for their home. (Tr. 111.) The evidence shows that the debt was incurred two years before he and his wife bought their home, and prior to their reported cohabitation. Applicant wants his spouse to agree in the divorce to hold him harmless for debts she incurred in his name. Applicant testified that his divorce attorney advised him to not pay any of the revolving credit-card accounts on his credit report before his divorce settlement is finalized. (Tr. 57.) Applicant terminated the services of his divorce attorney in February 2020 because of the expense. He has elected to proceed *pro se* in his divorce proceedings going forward. (Tr. 58.)

On March 13, 2020, Applicant provided a copy of the proposed divorce settlement, which has yet to be executed. Under the pending divorce settlement, charges in Applicant's name are solely his responsibility. As for joint credit-card debts, Applicant wants his spouse to agree to hold him harmless for six accounts, none of which are listed in the SOR. Utility bills incurred while the marital house was vacant from December 2018 to November 2019 are to be divided equally. (AE O.)

Applicant rents an apartment in the city for \$2,600 per month. He has nothing in savings, but he has checking account deposits of approximately \$10,000. (Tr. 115.)

On January 23, 2020, Applicant's military customer requested an interim access waiver for six months to allow Applicant access to a NIPRnet network on the military base. The request was approved on January 27, 2020. (AE J.) As of March 4, 2020, Applicant was the project lead on a program involving an acquisition strategy on cyber technologies for the military. (AE M; Tr. 86.)

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 *a/so* 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 was chronically late in making his payment on his truck loan (SOR ¶ 1.a) obtained in December 2017 almost from the start. His excuse was that he was told by his divorce attorney to make payments on his marital debts only when she directed. However, account information shows that he was assessed late fees each month in the five months preceding his marital separation. The evidence shows that Applicant took on more debt than he could reasonably afford. As of December 2018, his vehicle loan was past due for \$2,381. The evidence also establishes that Applicant broke his apartment lease in February 2016 by vacating the premises early. He was billed \$8,111 in May 2016 for back rent, utilities, and other fees. As of October 2019, the debt was in collection for \$19,585. Applicant has been unwilling to settle with the creditor because he disputes the amount. He claims that the debt should be about \$6,000, and should be split between him and his estranged spouse in their divorce, although he also testified that he was the only signatory to the lease.

Available credit reports in evidence list additional delinquencies, which Applicant claims are either fraudulent, such as the private student loan in collection for \$22,823 (SOR ¶ 1.b, same debt as SOR ¶ 1.e); have been paid (SOR ¶ 1.g); or were resolved by him or his wife returning cable equipment (SOR ¶¶ 1.d and 1.f). Under ¶ E3.1.14 of the Directive, the government has the burden of presenting evidence to establish controverted facts. The Appeal Board held in ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010) that a credit report is sufficient to meet the government's burden of producing evidence of delinquency:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

All of the debts in the SOR appear on one or more of the reports of Applicant's credit. The following four disqualifying conditions under AG ¶ 19 have some applicability in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (e) consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or non-payment, or other negative financial indicators.

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) does not apply because Applicant's financial issues did not occur so long ago and involved several accounts, including such significant accounts as his truck loan (SOR ¶ 1.a) and the mortgage on his marital home (not alleged). Moreover, the 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 presented no proof of any payments toward resolving his debts apart from his truck loan.

AG ¶ 20(b) has some applicability because of Applicant's lack of employment income for about five or six months in 2016 when his then employer lost some contracts. The apartment debt in SOR ¶ 1.c is directly attributable to this lack of income. Applicant's marital separation and impending divorce are circumstances that also trigger AG ¶ 20(b). Applicant testified that he incurred about \$22,700 in attorney fees from his divorce, of which he has apparently paid all but \$1,000. Even so, his financial problems cannot all be explained by the dissolution of his short-lived marriage. Applicant overextended himself financially by taking on a vehicle loan for \$71,869 in January 2016, requiring repayment at \$1,249 per month, and then obtaining a mortgage loan for \$379,000 in October 2017, requiring repayment at \$2,797 per month. He compounded his financial problems by rolling vehicle debt for his wife and her sister into a loan of \$83,072 for his 2018 model-year truck in December 2017.

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)). His evidence falls somewhat short in that regard. He has explained that he was chronically late in his payments on his truck loan because he was acting on the advice of his divorce attorney, who wanted to ensure no duplicate payments. However, account records for that loan show that he was late in his payments in the months preceding his marital separation, when he would have not had any need for a divorce attorney. He claimed that he restructured his loan in March 2019 to remove his spouse's name, but then persisted in his late payments thereafter. Additionally, while it is not unreasonable for Applicant to ask for verification of the delinquencies on his credit record, he knew or should have known as of his August 2018 personal subject interview

that the debts in the SOR were of concern to the DOD. There is no documentation showing that he sent timely letters to his creditors requesting verification of his debts.

AG ¶¶ 20(c) and 20(d) have limited applicability. Applicant testified that he caught up on his truck loan (SOR ¶ 1.a), but he had to ask his lender in December 2019 to add one month to the end of his loan. The insurance debt (SOR ¶ 1.g) has been paid and his account brought current. Applicant's current billing statement with the creditor in SOR ¶ 1.d shows he does not have an outstanding balance **on that account**. There is no evidence showing the \$777 debt incurred at his marital residence has been paid. Similarly, there is no proof that the \$456 cable services debt has been resolved. If the debt is the same as the \$710 cable debt, AE E shows that the account has been closed and returned to his creditor with the adverse credit entry to be deleted from his record. The fact that a collection entity returned a debt is not the same as payment, and removal of a credit listing might be because the debt is no longer held by the collection entity and has been transferred to a different collection agency. Even if Applicant no longer owes the \$710, he did not show that it is the same debt as the \$456 cable services debt in collection.

Applicant's ongoing disregard of the apartment debt for \$19,585 (SOR ¶ 1.c) is of significant security concern. Applicant has not made any payments to address his back rent because he disputes the balance as to the rent delinquency. Applicant bears some responsibility for the apartment debt's accrual to \$19,585 because of his failure to be more proactive in resolving the debt. Although he claimed that he tried several times to come to an agreement over a more reasonable balance with his former landlord, he did not request verification of the debt in writing until December 2019. His October 2019 credit report shows that the debt met the standards of the FCRA. Neither AG ¶ 20(c) nor AG ¶ 20(d) is satisfied as to that delinquency.

As for the private student loan (SOR ¶ 1.b, duplicated in SOR ¶ 1.e), Applicant maintains that he obtained only one loan, a federal student loan for \$3,500, which he paid in March 2017, after he had defaulted on the loan in December 2016 for \$1,161. The CFPB took action against the student-loan trust named in SOR ¶ 1.a in September 2017 for illegal collection practices, but Applicant did not provide any documentation to prove he was the victim of a predatory collection practice. The company who previously serviced his federal loan reports that it held a second loan, a private loan. That loan servicer is not named in the CFPB action. Unfortunately, the documentation from the loan servicer does not include any account numbers. Applicant provided no documentation proving that the private student loan was listed on his credit record in error or is a fraudulent listing. At the same time, Applicant persists in denying the validity of the loan. No evidence was provided showing that the loan was disbursed to Applicant. The listed acquisition date of the loan, December 2006, was around the time that Applicant told the military in appeal of his non-judicial punishment that he intended to attend a state university that he ultimately did not attend. I cannot speculate as to whether the loan funds were disbursed. The evidence falls short of establishing that the private student loan is a valid debt. AG ¶ 20(e) applies to the student loan (SOR ¶ 1.b, duplicated in SOR ¶ 1.e).

Applicant's security clearance eligibility does not simply turn on the issue of the student loan, however. Applicant showed poor financial judgment in his handling of the apartment debt and taking on a truck loan for \$83,072 that he has struggled to pay on time. 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 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 no payment plan in place for the delinquency owed his former landlord. He has not provided proof that the delinquencies in SOR ¶¶ 1.d and 1.f are resolved. The financial considerations security concerns are not adequately mitigated.

Guideline E: Personal Conduct

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

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

Applicant was found to have committed offenses by a field grade officer in a non-judicial punishment proceeding in September 2006 of forgery, fraud, making a false statement, unauthorized wearing for a military uniform, and impersonation. His misconduct was adjudged a bar to reenlistment, and he was separated involuntarily with an honorable discharge from the military in January 2007. AG ¶ 16(d) applies. It states:

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

(3) a pattern of dishonesty or rule violations.

In reliance on the adverse credit information showing a defaulted private student loan (SOR ¶ 1.b, duplicated in SOR ¶ 1.e), the SOR also alleges that Applicant deliberately made a false statement to a mortgage consultant in September 2017 when he stated that he had only one student loan, i.e., his federal student loan, which he paid in March 2017, a few months after he defaulted. Whereas there exists some doubt as to whether Applicant

is contractually obligated for the debt, I am unable to conclude that Applicant lied to the mortgage consultant about his student-loan delinquency.

Application of AG ¶ 16(d) because of Applicant's misconduct in 2006 while serving on active duty triggers consideration of the mitigating conditions under AG ¶ 17. AG ¶ 17(c) applies because of the passage of almost 14 years since the misconduct. AG ¶ 17(c) provides:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Yet, despite the passage of so much time, Applicant has not shown that he fully accepts responsibility for that behavior. He denies any fraudulent activity, even though the Commander's report of disciplinary action (GE 7) indicates that he pled "guilty" to all five of the offenses, including forgery, fraud, and making a false statement. Instead of showing the reform that could have triggered AG ¶ 17(d) ("the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur"), Applicant would have the Government believe that it involved only driving a private vehicle, which he needed for warfighter training, and that his unauthorized wearing of sergeant rank was only "partially wrong" because his LES reflected his rank as E-5. His current lack of full candor about his misconduct in 2006 causes lingering doubt about his personal conduct. For the reasons noted, the personal conduct security concerns are not fully mitigated.

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 and Guideline E, but some warrant additional comment. The security clearance proceeding is not intended to punish an applicant for past shortcomings. Applicant was only 22 years old when he committed the misconduct that led to his non-judicial punishment. He was given

an involuntary discharge from the military, but his service was characterized as honorable, perhaps in recognition of his service in hazardous-duty locations. Applicant is to be credited for his professional advancements. He has a well-paying job and, while there are no statements from co-workers or his military customer about the quality of his work, he was granted an interim access waiver to support a program for the Air Force in January 2020. In terms of his career, he has come a long way. Yet, he continues to act in self-interest and display poor judgment in terms of accepting responsibility, even with respect to addressing his financial delinquencies. He blames his late payments on his truck loan on his divorce and advice from his attorney not to pay debts until she advised him to do so, even when the evidence shows that he struggled to pay his loan on time from the start, months before his wife told him she wanted a divorce. He has not shown good faith with respect to reaching an acceptable solution to the apartment debt. He has the funds available to pay the \$777 and \$456 collection debts on his credit record, which are not mentioned in pending divorce settlement, and has not provided clear evidence of satisfaction.

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. 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). After applying the disqualifying and mitigating conditions to the evidence presented, I continue to have some doubts about Applicant's judgment, reliability, and trustworthiness. I conclude that it is not clearly consistent with the interests of national security to grant 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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c-1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For 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