



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 [Redacted]) ISCR Case No. 19-02176
)
 Applicant for Security Clearance)

Appearances

For Government: Erin P. Thompson, Esq., Department Counsel
For Applicant: Phoenix S. Ayotte, Esq.

11/16/2020

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on September 20, 2016. On October 4, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD CAF acted under Executive Order (Exec. Or.) 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 adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), for all adjudicative decisions on or after June 8, 2017.

Applicant answered the SOR on January 8, 2020, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on March 11, 2020, and the case was assigned to me on June 17, 2020. The hearing was tentatively

scheduled for mid-July 2020. On June 18, 2020, Applicant's attorney, who had moved to another state but continued to represent Applicant, requested a continuance until early September 2020, which I granted. On July 15, 2020, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for September 10, 2020. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 7 were admitted in evidence without objection. Applicant testified, presented the testimony of two witnesses, and submitted Applicant's Exhibits (AX) A through M, which were admitted without objection. Applicant previously had appended 12 exhibits to his answer to the SOR, which were marked as Applicant's Answer Exhibits (AAX) A through L and admitted without objection.

I kept the record open to enable Applicant to submit additional documentary evidence and to allow the parties to enter into a stipulation of the medical conditions of Applicant, his wife, and their daughter. Applicant timely submitted AX AA, BB, and CC, which were admitted without objection. (Applicant marked his post-hearing exhibits with double letters rather than continuing the alphabetical lettering of the exhibits submitted at the hearing.) The parties also entered into a joint stipulation of medical conditions, which was admitted as AX DD. The record closed on October 25, 2020. DOHA received the electronic transcript of the hearing on September 23, 2020; a partial paper transcript on September 28, 2020; and a complete paper transcript (Tr.) on October 27, 2020.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations. At the hearing, he amended his answer to deny SOR ¶ 1.n, on the ground that the delinquent debt alleged in SOR ¶ 1.n was paid. Department Counsel did not object to the amendment and conceded that the debt was paid. (Tr. 13-14.) Applicant's admissions are incorporated in my findings of fact.

Applicant is a 50-year-old program manager employed by federal contractors since October 2011. He was cleared for a public trust position by another federal agency, but he has never held a security clearance. (GX 1 at 28; AAX I at 2.)

Applicant married in July 1994 and divorced in October 2000. He married his current wife in August 2001. He has three children from his first marriage, ages 25, 23, and 21, and a 16-year-old daughter from his current marriage.

Applicant's wife worked in the private sector, was laid off for about six months, and then was hired as a software programmer for a federal agency in December 2002. (Tr. 58, 66.) She was self-taught until she began taking college courses in 2006. She incurred two student loans, which are her sole responsibility. The payments were about \$442 and \$227 per month until they were consolidated a "few years ago." (Tr. 59.) Her student-loan debt is about \$178,000. (AAX E.)

When Applicant's wife was hired in December 2002, Applicant had been unemployed for about a year. (Tr. 66.) They had made a \$20,000 earnest-money payment

on a home, which they lost when they could not afford to complete the purchase. (Tr. 67.) In August 2010, Applicant's wife accepted a federal position in another state that required a security clearance, which she received. Her new job increased her annual pay from \$57,000 to \$120,000. (Tr. 72-73.) In 2018, she was hired by a defense contractor for her current job as the director of cybersecurity. (AAX E.)

Applicant's 16-year-old daughter has asthma and severe allergies. She requires daily medication. Her asthma places her at a higher risk of allergic reactions. Her asthma can be triggered by cigarettes, dust, mold, plants, pets, wood smoke, peanuts, and tree nuts. She requires an immediate injection of epinephrine upon display of allergic symptoms. Her allergies are so severe that exposure to them in an enclosed space can cause her to go into anaphylactic shock. (AX BB.)

Applicant's daughter is now enrolled in a private school, and she has an individualized education plan that can accommodate her special needs. (AX I; Tr. 83-84.) Applicant and his wife incur continuing tuition expenses, expenses for special equipment, and the expenses of modifications to their home to accommodate her medical needs. (Tr. 85-86; AX BB; AX DD.)

Applicant's wife has an inherited genetic mutation that causes multiple pulmonary embolisms and venous thrombosis. She had two miscarriages before their 16-year-old daughter was born in 2004, and she was on bed rest for 14 weeks after childbirth. (Tr. 64.) While Applicant's wife was pregnant, Applicant had medical conditions that required surgery on three occasions, including emergency surgery for kidney failure caused by kidney stones. (Tr. 64.)

In September 2004, Applicant and his wife filed a joint petition for Chapter 13 bankruptcy. It was converted to a Chapter 7 bankruptcy in March 2005, and a discharge was granted in July 2005. (GX 6.) Seventeen debts totaling about \$49,271 were discharged. The debts were for lawn service (\$80); two unsecured loans (\$295 and \$740); school tuition for their daughter (\$587); three medical debts (\$572, \$2,680, and \$864); five credit cards (\$539, \$618, \$553, \$553, and \$2,317); two car loans (\$17,278 and \$20,294); two debts to a moving company (\$580 each); and state taxes (\$136). This bankruptcy is alleged in SOR ¶ 1.a.

Based on a pediatrician's advice, Applicant was voluntarily unemployed from July 2005 to October 2011 to stay home and care for their daughter and homeschool her. (Tr. 62.) He worked in intermittent construction jobs on weekends or when his wife was at home. (Tr. 70.) He attended college classes on line and on weekends from 2002 to 2008, and he incurred student loans to pay for his classes. (Tr. 72.)

In September 2010, Applicant's parents-in-law moved in with them because his father-in-law had serious health problems and they were unable to make their mortgage payments. His in-laws lived with them for two years, during which time Applicant and his wife paid all their living expenses. (Tr. 73-74).

In October 2011, Applicant was hired as a program manager for a federal contractor. He left this job in August 2012 for what he considered a better position with his current employer, also a federal contractor. His current financial problems were triggered in December 2012, when his former employer sued him for violation of the non-compete provisions in his contract, seeking \$2.5 million in damages and injunctive relief. (AX C.) The lawsuit was vigorously contested by Applicant and his new employer, who voluntarily paid more than \$80,000 of Applicant's legal expenses. (AX D-G; Tr. 105.)

In January 2013, Applicant was informed by his new employer that the payment of legal expenses was a bonus, for which no federal or state taxes were withheld. As a result, Applicant's taxable income was increased from around \$190,000 to \$285,000. (Tr. 114; AX H; AX M.)

In February 2013, Applicant filed a demurrer to his former employer's complaint, asserting that the complaint was based on an unenforceable non-compete agreement. (AX E.) In May 2013, the court granted the demurrer in part. (AX G.) In October 2013, Applicant filed a motion for summary judgment. (AX F.) Shortly thereafter, his former employer accepted an offer to settle the lawsuit for \$40,000.

Applicant filed a petition for Chapter 13 bankruptcy in March 2015. (GX 5.) This bankruptcy is alleged in SOR ¶ 1.b. This petition and all subsequent bankruptcy petitions were filed by Applicant as the sole debtor. This petition listed one secured debt for a car loan with an unpaid balance of \$25,328; an unsecured priority debt for \$58,000 to the IRS; and \$220,876 in unsecured nonpriority debts, all of which were student loans, except for two credit-card accounts with balances of \$1,773 and \$3,400. The May 2019 credit report (GX 7) reflects that all of Applicant's student loans became delinquent between December 2013 and February 2014. The petition was dismissed in March 2016 after confirmation of his plan was denied, because his unsecured debts exceeded the maximum allowed in a Chapter 13 bankruptcy. (Tr. 23.)

Applicant filed a petition for Chapter 11 bankruptcy in March 2016. (GX 4.) This bankruptcy is alleged in SOR ¶ 1.c. In this petition, he listed a tax debt of \$3,575 to the state where he resided from August 2010 to September 2014; a federal income tax penalty of \$5,845; a federal income tax debt of \$89,937 for tax years 2012 through 2014; student loans totaling \$372,789; and other nonpriority unsecured debts totaling \$110,502. Six of the nonpriority unsecured debts were listed as disputed, including two large debts for \$16,228 and \$45,290, but the bases for the disputes are not reflected in the record. In January 2017, he requested that the case be dismissed because the maximum dollar amount of unsecured debts permitted in a Chapter 13 bankruptcy had been increased, and he had paid down some of his unsecured debts. (Tr. 24.)

In 2017, Applicant was diagnosed with a blood deficiency and suffered two pulmonary embolisms. He also underwent multiple gallbladder surgeries. (AAX E.) He continued to work full time in spite of his medical problems. In November 2017, his wife was granted workplace accommodations that include telework, an air filtration machine in her office, no air travel, and "maxiflex" work schedules. (AX AA and DD.)

Applicant did not file his federal income tax returns for tax years 2013 through 2016. (AX J.) In July 2018, he made a payment agreement with the IRS for tax year 2013, and he began making monthly payments of \$1,310 per month. His total payments for tax year 2013 were \$11,790. He made no payments for tax years 2014, 2015, or 2016. His federal tax debt as of July 2019 was \$130,324. (AAX D.) He testified that in 2019, the IRS terminated his payment plan because his tax debt was more than the \$100,000 limit on payment plans. (Tr. 110-11, 126.) He has not made any further payments on his federal tax debt since his payment plan was terminated. His federal tax debt is alleged in SOR ¶ 1.d.

Applicant did not timely file his state income tax returns for 2014 and 2015. A state tax debt of \$8,802 to his former state of residence is alleged in SOR ¶ 1.d. In his answer to the SOR, he stated that his tax debt to his previous state of residence was included in his most recent bankruptcy petition. However, the only state tax debt in his January 2020 petition is a debt to his current state of residence, which is not alleged in the SOR. His answer to the SOR included a statement from his wife stating that he was paying \$550 per month on his delinquent state taxes. She did not state whether he was making payments to his current state of residence or his former state of residence. (AAX E.) Applicant has not provided any documentation of payments to either state.

Applicant timely filed his federal returns for 2018 and 2019. He and his bankruptcy attorney testified that he is in the process of amending the returns for these two years in an effort to lower the amount of taxes due. (Tr. 114.) He and his wife had been filing separate returns, which increased their total income tax obligation, in order to protect her income from the lawsuit by his former employer. (Tr. 50-51.) As of the date the record closed, Applicant had submitted no evidence that he had filed his amended federal income tax returns.

Applicant filed a petition for Chapter 13 bankruptcy in January 2020. This bankruptcy was not alleged in the SOR. He listed a tax debt of \$25,000 to the state where he currently resides, a federal tax debt of \$108,000, student loans totaling \$262,594, and nonpriority unsecured debts of \$7,875. He did not list the tax debt of \$8,802 to the state where he resided from August 2010 to September 2014, which he admitted in his answer to the SOR. He did not list any medical debts, but in his post-hearing submission he provided documentation of family medical expenses totaling about \$54,352, incurred between May 2018 and September 2020. (AX CC; AX DD.) This bankruptcy petition was dismissed in July 2020 at Applicant's request, when he discovered that his payments on the mortgage loan for their home, which was not included in the bankruptcy, would have made his monthly payments to the bankruptcy trustee more than he felt he could afford. His listing of monthly expenses in his petition reflected monthly payments on the first mortgage on their home of \$3,100 and monthly payments of \$800 on an additional mortgage. (GX 3; Tr. 26.)

Applicant refiled his petition for Chapter 13 bankruptcy in August 2020, and it was pending at the time of the hearing. (GX 2.) This petition was not alleged in the original SOR. Department Counsel's motion to amend the SOR to include this bankruptcy was

granted without objection, and it is alleged in SOR ¶ 1.x. (Tr. 139.) (The additional allegation was mistakenly referred to as SOR ¶ 1.y at the hearing.) As of the date of the hearing, Applicant had not filed Schedules E and F (unsecured claims), because he hoped that filing amended federal income tax returns jointly instead of separately would reduce the amount of delinquent federal taxes included in the bankruptcy. (Tr. 42-43.) As of the date the record closed, Applicant had submitted no evidence that he had completed his bankruptcy petition by filing Schedules E and F.

In the August 2020 bankruptcy petition, Applicant and his wife reported monthly income of \$20,822.39 and a net remainder after paying monthly expenses of \$3,554.39, which will be his monthly payment if the plan is approved. (Tr. 27.) Applicant's bankruptcy attorney testified that the monthly payment to the trustee would require Applicant and his family to "live tight" during the period of the bankruptcy plan, because they would be required to dedicate almost all of their disposable income to the bankruptcy plan. Applicant's monthly payments on the home mortgage loan (reported in his January 2020 petition as \$3,100 on the first mortgage and \$800 on an additional mortgage) and car payments (reported in the January 2020 petition as \$829 and \$771 for two cars) are not included in the proposed plan, because Applicant intends to keep the family home and their cars. (Tr. 31.)

Applicant has completed the financial counseling required by the bankruptcy court. (Tr. 35-36.) He maintains a spreadsheet of family income and expenses, and he updates it weekly. (Tr. 118-19.) His current annual salary is about \$190,000. (Tr. 128.) He and his wife have a combined annual income of more than \$400,000. (Tr. 131.) He testified that he has increased the tax withholding from his pay and included the increased withholding in calculating his ability to comply with a Chapter 13 payment plan. (Tr. 132.)

In addition to Applicant's bankruptcy filings alleged in SOR ¶¶ 1.a-1.c and 1.x and the federal and state tax debts alleged in SOR ¶¶ 1.d and 1.e, the SOR alleges 18 delinquent debts totaling about \$408,827. The evidence concerning these debts is summarized below.

SOR ¶¶ 1.f-1.i, 1.k, 1.l, and 1.o-1.w: delinquent student loans totaling about \$373,763. Applicant's delinquent student loans are reflected in a May 2019 credit report. (GX 7.) All the student loans were included in the January 2020 bankruptcy petition. Although most student loans are not discharged in bankruptcy, Applicant is counting on the likelihood that some of the student loans are private loans that may not be enforceable because the statutes of limitation have run. (Tr. 29-30.) He submitted no evidence of any payments or other resolution of the delinquent student loans.

SOR ¶ 1.j: judgment for \$7,020. In Applicant's answer to the SOR, he admitted this judgment but stated that he was unable to identify the original creditor. However, in his Chapter 11 bankruptcy petition, he identified the original creditor. (GX 4 at 9, 18.) He also stated that the debt was disputed, but he did not state the basis for the dispute. The judgment is not reflected in the credit report from May 2019 or the two credit reports

submitted by Applicant. (GX 7) By listing this debt in his most recent bankruptcy petition, he hopes that the validity of the debt will be determined. It is not resolved.

SOR ¶ 1.m: payments on settlement agreement past due for \$3,360. After the lawsuit filed by Applicant's former employer for violation of a non-compete law was settled for \$40,000, Applicant made an immediate payment of \$30,000 and agreed to pay \$250 per month toward the balance of \$10,000. For about a year and a half, he made his payments in cash by making counter deposits to the former employer's bank account. He discontinued his payments when the bank would no longer accept the counter deposits. He testified that, in spite of several inquiries, the former employer has not provided any new instructions for making the payments. (Tr. 106-08.) This debt is not reflected in the May 2019 credit report (GX 7), but Applicant admitted it in his answer to the SOR. It was included in the March 2016 bankruptcy petition, but it was not included in January 2020 bankruptcy petition.

SOR ¶ 1.n: past due car payments totaling \$24,684. This debt arose when Applicant stopped making payments to a third-party loan servicer and surrendered the vehicle, which was sold. In his answer to the SOR, Applicant stated that the loan servicer told him in 2016 that the account was settled. The May 2019 credit report lists the account as a "closed or paid account" with a zero balance. (GX 7 at 5.) A credit report from September 2020 reflects that the account is current with a zero balance. (AX A at 39.) Another credit report from September 2020 reflects that the debt was "paid satisfactorily and is closed. (AX B.) Department Counsel conceded that the debt was resolved in 2013. (Tr. 13-14.)

Applicant has received top ratings from his current employer for the past five years. (AX K.) The Chief Operating Officer for his current employer considers him highly skilled, reliable, credible, and devoted to his family. (AX L at 1-2.) A retired member of the Senior Executive Service has known Applicant for more than seven years and considers him trustworthy, loyal, and reliable. (AX L at 4-5.) A personal friend, who is a retired Air Force officer, has known Applicant since 2014 and believes he is patriotic, devoted to his job, and dedicated to his family. (AX L at 6-7.)

One of Applicant's immediate subordinates, who holds a bachelor's degree in economics and a law degree, submitted a letter supporting Applicant. She considers Applicant one of their employer's most effective leaders and committed supporters. She describes him as a warm, welcoming, charismatic, helpful, and effective leader. She considers him faithful, trustworthy, and a person of integrity. She has witnessed his devotion to his family. She has observed that his consistency and unwavering support of his team has garnered staff loyalty, respect, and dedication. As a subordinate, she feels valued and appreciated by Applicant. (AAX I.)

A coworker, who served in the U.S. Air Force for 23 years, has known Applicant for three years, and has had a personal friendship with him for one year. He strongly supports Applicant's application for a security clearance. He has been impressed by Applicant's commitment to the mission and watched him inspire his team members to

provide the highest level of service to their employer. He considers Applicant an excellent steward of his employer's and the public's money. He trusts Applicant without reservation. (AAX J.)

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr.20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

Analysis

Guideline F, Financial Considerations

The security concern under this guideline is set out 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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

I have considered whether the bankruptcies alleged in SOR ¶¶ 1.b, 1.c, and 1.x duplicate the allegations of delinquent debts in SOR ¶¶ 1.d-1.w. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005) (same debt alleged twice).

While there is considerable overlap between the bankruptcies alleged in SOR ¶¶ 1.b and 1.c with the debts alleged in SOR ¶¶ 1.d-1.w, the bankruptcy petitions alleged in SOR ¶¶ 1.b and 1.c included debts not alleged in the SOR. The most recent bankruptcy petition is incomplete, making it impossible to determine the extent of duplication, if any. Accordingly, I have not resolved any of the alleged debts in SOR ¶¶ 1.d-1.w in Applicant's favor as duplicates of SOR ¶¶ 1.b, 1.c, or 1.x.

Applicant's admissions and the documentary evidence submitted by the parties establishes the following disqualifying conditions under this guideline:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the ability to do so;

AG ¶ 19(c): a history of not meeting financial obligations; and

AG ¶ 19(f): failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

The following mitigating conditions are potentially applicable:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(c): the individual has received or is receiving financial 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;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(g): the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

AG ¶ 20(a) is established for the bankruptcy alleged in SOR ¶ 1.a, which is mitigated by the passage of time. There is no evidence that Applicant experienced financial problems after his 2005 bankruptcy discharge until 2013, when he was confronted with an unexpected lawsuit and the tax consequences of his new employer's decision to compensate him for his legal expenses.

AG ¶ 20(a) is partially established for the bankruptcies alleged in SOR ¶¶ 1.b, 1.c, and 1.x and the delinquent debts alleged in SOR ¶¶ 1.d-1.w, because they were triggered under circumstances making recurrence unlikely, *i.e.* an unexpected lawsuit and unanticipated tax consequences of a "bonus" to offset legal expenses. Nevertheless, Applicant's growing federal tax debt, unresolved student loans, and minimal progress in

resolving his other debts over a period of five years raises doubts about his current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) is partially established. The medical problems, medical debts, lawsuit, tax consequences of Applicant's employer's financial assistance with the costs of litigation, and the debt incurred to settle the lawsuit were conditions largely beyond his control. He acted responsibly regarding settlement of the lawsuit and payment of his medical debts. However, he has not acted responsibly regarding his federal and state tax debts and his delinquent student loans. His federal tax debt increased by \$35,499 in tax year 2014; \$25,416 in tax year 2015; and \$22,738 in tax year 2016, indicating that he did not take measures to avoid going deeper in debt, such as increasing payroll withholding or making quarterly payments on estimated taxes. He did not begin making payments on his 2013 federal taxes until July 2018. His current plan to utilize bankruptcy has not progressed sufficiently to mitigate security concerns. He has no current plan to resolve his delinquent federal and state taxes. He has no current plan to resolve his student loans, except to hope that some of the private loans are barred by a statute of limitations.

AG ¶ 20(c) is not fully established. Although Applicant has received financial counseling, his financial problems are not under control. He is relying on the bankruptcy process to bring them under control, but he filed his most recent bankruptcy petition in August 2020 and does not yet have an approved payment plan.

AG ¶¶ 20(d) and 20(g) are not established. Applicant does not have payment plans in effect for his debts, including his tax debts. He receives some mitigation credit for reducing some of his nonpriority unsecured debts between the time he filed his Chapter 11 petition in March 2016, dismissed it in January 2017, and filed his Chapter 13 petition in January 2020, but he submitted no evidence that he had completed his August 2020 petition as of the date the record closed. He has no current bankruptcy plan in effect. He hopes that collection of some of his private student loans may be barred by the statute of limitations, but reliance upon a statute of limitations does not constitute a good-faith effort to resolve that debt within the meaning of the Directive. ISCR Case No. 07-06841 at 4 (App. Bd. Dec. 19, 2008). See ISCR Case No. 11-08274 (App. Bd. May 2, 2013).

A security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, pay the debts alleged in the SOR first, or establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). After more than five years, Applicant is still searching for a plan. He has not articulated with any specificity how he intends to address his tax debts, delinquent student loans, and the remaining nonpriority unsecured debts totaling about \$7,875.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances and applying the adjudicative 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.

Applicant is highly regarded by his supervisors, co-workers, and friends. He and his family have encountered numerous financial, personal, legal, and medical difficulties. He was candid and sincere at the hearing. He and his wife acted responsibly in September 2004 by filing a joint bankruptcy petition. However, Applicant has filed subsequent bankruptcy petitions as a sole debtor in March 2015, March 2016, January 2020, and August 2020, and he still does not have an approved payment plan. Applicant's bankruptcy attorney acknowledged that if his most recent bankruptcy petition results in an approved payment plan, he will need to be on tight budget to comply with it. Except for the short time when Applicant had a payment plan with the IRS, he has never established a track record of complying with a payment plan, and it is too soon to determine whether he has the financial discipline to do so. After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his delinquent debts.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraphs 1.a, 1.m, and 1.n: For Applicant

Subparagraphs 1.b-1.l and 1.o-1.x: Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman
Administrative Judge