



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 19-02340
)	
Applicant for Security Clearance)	

Appearances

For Government: Moira Modzelewski, Esq., Department Counsel
For Applicant: *Pro se*

03/18/2020

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant defaulted on \$36,359 in consumer debt, including some federal student loans. He has been making small payments on the debts, but he has yet to establish that his financial issues are no longer of security concern. Clearance is denied.

Statement of the Case

On October 4, 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 November 4, 2019, Applicant answered the SOR allegations and requested a decision on the written record without a hearing. On December 23, 2019, the Government submitted a File of Relevant Material (FORM), including documents identified as Items 1 through 7. The Defense Office of Hearings and Appeals (DOHA) forwarded a copy of the FORM to Applicant and informed him that any response was due within 30 days of receipt. Applicant received the FORM on January 12, 2020, and he submitted an undated response to the FORM that was received by DOHA on February 11, 2020. On February 14, 2020, Department Counsel indicated that the Government had no objection to Applicant's response to the FORM. On February 18, 2020, the case was assigned to me to determine whether it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant. I received the case file on February 21, 2020.

Evidentiary Rulings

Department Counsel submitted, as Item 4, a summary report of personal subject interviews (PSI) of Applicant conducted on February 7, 2019, February 8, 2019, and February 18, 2019. The summary report was included in the DOD Report of Investigation (ROI) in Applicant's case. Under ¶ E3.1.20 of the Directive, a DOD personal background ROI may be received in evidence and considered with an authenticating witness, provided it is otherwise admissible under the Federal Rules of Evidence. The summary report did not bear the authentication required for admissibility under ¶ E3.1.20.

In ISCR Case No. 16-03126 decided on January 24, 2018, the DOHA Appeal Board held that it was not error for an administrative judge to admit and consider a summary of a PSI where the applicant was placed on notice of his or her opportunity to object to consideration of the summary; the applicant filed no objection to it; and there is no indication that the summary contained inaccurate information. In this case, Applicant was provided a copy of the FORM and advised of his opportunity to submit objections or material that he wanted the administrative judge to consider. In the FORM, Applicant was advised as follows:

***IMPORTANT NOTICE TO APPLICANT:** The attached summary of your Personal Subject Interviews (PSI) (Item 4) is being provided to the Administrative Judge for consideration as part of the record evidence in this case. In your response to the FORM, you can comment on whether [the] PSI summary accurately reflects the information you provided to the authorized OPM investigator, and you may make any corrections, additions, deletions, and updates necessary to make the summary clear and accurate. Alternatively, you may object on the ground that the report is unauthenticated by a Government witness and the document may not be considered as evidence. If no objections are raised in your response to this FORM, or if you do not respond to this FORM, the Administrative Judge may determine that you have waived any objections to the admissibility of the summary and may consider the summary as evidence in your case.

Applicant did not mention the PSI in his response to the FORM. Concerning whether Applicant understood the meaning of authentication or the legal consequences of waiver, Applicant's *pro se* status does not confer any due process rights or protections beyond those afforded him if he was represented by legal counsel. He was advised in ¶ E3.1.4 of the Directive that he may request a hearing. In ¶ E3.1.15, he was advised that he is responsible for presenting evidence to rebut, explain, or mitigate facts admitted by him or proven by Department Counsel and that he has the ultimate burden of persuasion as to obtaining a favorable clearance decision. While the Directive does not specifically provide for a waiver of the authentication requirement, Applicant was placed on sufficient notice of his opportunity to object to the admissibility of the PSI, to comment on the PSI, and to make any corrections, deletions, or updates to the information in the PSI. Applicant is deemed to have waived any objections to the PSI.

Accordingly, Items 1 through 7 were accepted into the record as exhibits for the Government. Applicant's response to the FORM was admitted as Applicant exhibit (AE) A.

Findings of Fact

The SOR alleges under Guideline F that, as of October 4, 2019, Applicant owed two student-loan debts of \$11,054 (SOR ¶ 1.a) and \$7,329 (SOR ¶ 1.c) in collection; a \$9,546 charged-off automobile loan (SOR ¶ 1.b); two mobile-phone debts of \$2,091 (SOR ¶ 1.d) and \$1,255 (SOR ¶ 1.u); four delinquent credit-card debts of \$603 (SOR ¶ 1.e), \$377 (SOR ¶ 1.f); \$345 (SOR ¶ 1.g), and \$517 (SOR ¶ 1.t); a \$438 satellite-television debt in collection (SOR ¶ 1.h); and 11 medical debts in collection totaling \$2,804 (SOR ¶¶ 1.i-1.s). (Item 1.) When Applicant answered the SOR, he admitted the debts and provided documentation of some payments toward his debts in SOR ¶¶ 1.a-1.h, 1.o, and 1.u, and to the collection agency that he asserted holds his medical bills in SOR ¶¶ 1.i to 1.p and 1.q. He also indicated that he had established a repayment arrangement for the debt in SOR ¶ 1.t. (Item 2.)

After considering Items 1 through 7, which includes Applicant's response to the SOR (Item 2), and Applicant's response to the FORM (AE A), I make the following findings of fact:

Applicant is 59 years old and a high school graduate who attended a technical college from December 2010 to February 2011. He served in the U.S. military from July 1985 to February 1987 when he was given a general discharge for marijuana use. Applicant has been married to his current spouse September 2009. He was married to his first wife from August 1992 to July 2008. He has a son age 41, two daughters ages 28 and 20, and a stepchild age 17. (Item 3.)

No information was provided about Applicant's employment for approximately the first 20 years after his military discharge. Between August 2006 and March 2018, he worked primarily as a telecommunications technician or engineer for a succession of employers outside of the defense industry. He was unemployed from December 2010 to February 2011, while attending a technical college, and most recently from November 2017

to January 2018. Since March 2018, Applicant has been employed as a technician for a defense contractor in support of the U.S. military. (Item 3.)

Applicant built a new home for his family into which they moved in December 2015. He obtained a 30-year mortgage loan for \$327,635. At the time, he was earning \$95,000 in annual salary. In October 2016, he was laid off. He was given six weeks notice and a severance package. He found another job almost immediately, but at loss of \$30,000 in annual salary from his previous job. He fell behind 30 days on his mortgage loan payments in May 2017, but brought the loan current in July 2017. However, Applicant was laid off in November 2017 when his then employer lost the contract, and he was unemployed until January 2018. He collected unemployment compensation, but could not maintain the payments on his mortgage. He contacted his mortgage lender and was told that he could not obtain a loan re-modification until his loan was 120 days past due. As of May 2018, his account was \$13,444 past due on a balance of \$327,427. In July 2018, he successfully modified his loan. In October 2018, he began repaying his loan under a modified payment agreement where the delinquency was added to the end of his loan and his monthly payments were lowered from \$2,094 to \$1,668. He made his loan payments on time until November 2019, when he missed his payment. As of December 2019, his modified mortgage was \$1,997 past due. (Items 2-7.) In rebuttal to the FORM, Applicant admitted that he was 15 days behind on his mortgage, but he borrowed \$827 from his 401k to catch up on his loan. Available loan documentation shows that he made his January 2020 payment late. His loan has a principal balance of \$229,629. His home has a taxable value of \$383,065, so he has considerable equity in his residence. (AE A.)

Applicant began working for his defense-contractor employer in March 2018, earning approximately \$63,000 a year. (Item 4.) In application for initial DOD clearance eligibility, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86) on April 3, 2018. In response to financial record inquiries, Applicant indicated that he was currently seeking assistance from a credit-counseling service or similar resource to resolve financial difficulties in that he had entered into a program to lower his interest and payments on debts that he did not specify. He responded affirmatively to questions concerning any delinquency involving routine accounts, and he listed seven debts: (1) a medical bill of \$1,959 from May 2013 that he was reportedly repaying at \$25 monthly; (2) a medical bill of \$726 from April 2016 that he was repaying at \$20 monthly (SOR ¶ 1.o); (3) a school loan of \$2,005 in a nine-month rehabilitation program; (4) a \$517 credit-card debt in collection that he was repaying at \$35 per month (SOR ¶ 1.t); (5) a \$9,581 car-loan debt for a vehicle "totaled out" in an accident (SOR ¶ 1.b) that he was reportedly repaying at \$20 a month; (6) a \$590 credit-card debt from June 2017 (SOR ¶ 1.g); and a mortgage loan past due for \$9,294 (not alleged). Applicant stated that he fell behind on his home loan due to a job loss in November 2017 [sic] and that he had successfully modified the loan to have the delinquency added to the end of a new loan with a lower monthly repayment. (Item 3.)

Available credit reports of May 23, 2018 (Item 5), May 15, 2019 (Item 6), and December 19, 2019 (Item 7), list several delinquencies on Applicant's credit record. Details about the debts in the SOR and repayment arrangements follow.

Student loans in collection for \$11,054 (SOR ¶ 1.a) and \$7,329 (SOR ¶ 1.c)

Applicant obtained two federal student loans in January 2011, for \$3,500 (not alleged in SOR) to be repaid at \$19 per month, and for \$5,415 (SOR ¶ 1.c), to be repaid at \$49 per month. Applicant obtained another federal student loan, for \$8,500 in September 2011, with required repayment at \$72 per month. (Items 2, 5-7.) He defaulted on the three loans in July 2017, and his debts were sold or transferred in March 2018. (Item 5.) He made \$25 payments in April 2018 and May 2018, and a \$20 payment in July 2018. He consolidated his three student loans, which were in collection. On October 5, 2018, he entered into an arrangement to make \$75 monthly payments toward his student loans. He made \$75 payments in November 2018 and December 2018. On February 7, 2019, during his PSI, Applicant explained that he made \$75 payments in November 2018 and December 2018, but that the company holding his loans made an error in his paperwork. He stated that he was awaiting a new loan agreement so that he could resume payments toward a consolidated balance of \$22,081. (Item 4.)

Available documentation shows that he made a payment of \$35 on February 16, 2019. As of February 19, 2019, his student loans had past-due balances of \$4,425 (not alleged in SOR), \$12,995 (SOR ¶ 1.a), and \$8,616 (SOR ¶ 1.c), and were included in an income-based repayment plan requiring monthly payments of \$5 to start on February 20, 2019. Applicant began making \$10 monthly payments (\$5 extra each month) toward his student-loan debts. (Item 2.) As of October 30, 2019, the aggregate balance of his three outstanding student loans was \$22,824. Payments of \$10 monthly were being automatically debited from his bank account. As of November 2019, his student loans were current with respective balances of \$11,473 (SOR ¶ 1.a), \$7,607 (SOR ¶ 1.c), and \$3,852 (not alleged in SOR). (Item 2.) He paid \$23 toward his student loans in December 2019. As of March 2020, his student loans were in administrative forbearance with a balance of \$23,179. Applicant explained in response to the FORM that he completed a rehabilitation program to lower his monthly payment from \$281 to \$203 with his first payment due on March 20, 2020. (AE A.)

Auto loan charge-off for \$9,546 (SOR ¶ 1.b)

In April 2016, Applicant and his spouse obtained a joint automobile loan for \$24,340, requiring repayment at \$443 per month. (Items 5-7.) The dealer offered no gap insurance. When his spouse had an accident in 2017, their insurance company decided “to total out the car,” leaving them owing a \$9,500 debt. Applicant states that the creditor would not finance the amount in a new vehicle and instead gave them the options of paying the balance in two or three installment payments, which they could not afford. Applicant made no payments after May 2017, and his account was charged off for \$9,581. (Items 2, 4.) The debt was placed for collection in April 2018 with \$9,561 owed. During his February 2019 PSI, Applicant stated that he had been making \$25 monthly payments every couple of months. On February 8, 2019, Applicant told the OPM investigator that he had arranged to make automatic payments of \$20 monthly toward this loan deficiency. He provided documentation of a \$20 payment pending as of March 1, 2019. (Item 4.) As of April 2019, the loan balance was past due for \$9,546. (Items 5-7.) Applicant presented documentation

of \$5 monthly payments toward the debt from May 2019 through November 2019. (Item 2.) His reported balance was \$9,511 as of November 30, 2019. (Item 7.) Effective February 28, 2020, he raised his monthly payment from \$5 to \$25. (AE A.)

Mobile phone debt in collection for \$2,091 (SOR ¶ 1.d)

As of May 2018, a collection entity was reporting a past-due balance of \$2,106 from December 2017 in collection. (Item 5.) During his February 2019 PSI, Applicant denied knowing about the debt and indicated that he would establish repayment arrangements if the debt was valid. He subsequently provided the OPM investigator with documentation showing that he arranged to make \$20 monthly payments to start on March 1, 2019. (Item 4.) Applicant now asserts that the creditor would only accept a one-time payment, but he began repaying the debt at \$5 per month starting May 1, 2019. Those payments were accepted by the creditor, who was reporting a \$2,056 balance as of December 5, 2019. (Items 2, 7.) Effective February 28, 2020, Applicant raised his monthly payment from \$5 to \$15. (AE A.)

Credit-card debt in collection for \$603 (SOR ¶ 1.e)

A credit-card account was charged off and sold in January 2017 to a collection entity with \$603 owed. As of February 2019, Applicant mistakenly believed that the debt was held by the same entity managing his accounts in SOR ¶¶ 1.f and 1.g. (Item 4.) As of May 2019, the debt was unpaid. (Items 5-7.) Applicant arranged to repay the debt in SOR ¶ 1.e at \$19.45 per month from October 28, 2019, through April 28, 2022. (Item 2.) As of December 2019, Applicant's credit report was showing a debt balance of \$564 after his November 2019 payment. (Item 7.)

Collection debt for \$377 (SOR ¶ 1.f, same debt in SOR ¶ 1.t)

In April 2017, a credit-card collection debt of \$517 was assigned for collection with the entity in SOR ¶ 1.t. (Items 5-7.) As of May 2018, the account had a past-due balance of \$377. (Item 5.) During his February 2019 PSI, Applicant related that, about four or five years prior, he and his spouse had several department store credit cards that were charging high interest rates, so they contracted with a debt management company, initially to negotiate for lower interest rates on their credit balances. In return for \$130 a month, the company initially managed five accounts. Applicant added accounts to the plan as needed. (Item 4.) As of his response to the SOR, the debts in SOR ¶¶ 1.f and 1.g were being managed by the company. Payment records show Applicant made lower payments to the debt management company of \$115 in February 2019 and April 2019, and increased his payments to \$130 in March 2019 and from May 2019 through October 2019. (Items 2, 4.) As of October 2019, the debt in SOR ¶ 1.f had a balance of \$273. After a payment in November 2019, his balance was \$251. (Items 2, 6-7.)

Credit-card debt in collection for \$345 (SOR ¶ 1.g)

A charge card opened with a retailer in December 2009 was charged off for \$590 due to no payment since March 2017. As of April 2018, the debt was in collection. As of April 2019, the account had a \$345 past-due balance. (Items 5-6.) The debt was being managed by the debt management company with a \$234 balance as of October 2019. On October 24, 2019, he made a \$22.85 payment directly to the collection agency for the debt. After a \$40 payment in November 2019, his debt balance was \$150. (Items 2, 7.)

Satellite television debt in collection for \$438 (SOR 1.h)

In June 2017, a satellite television service provider placed a \$438 debt for collection. In January 2018, the debt was acquired by the collection entity in SOR ¶ 1.h. As of May 2018, the debt was still outstanding. (Item 5.) When confronted about the debt during his February 2019 PSI, Applicant explained that he had paid the final bill, but the dish equipment was still on the roof of his home. He explained that he would contact the creditor to return the dish and set up a repayment plan. (Item 4.) In response to the SOR, Applicant explained that he was not satisfied with the service, but the provider would not let him out of the two-year contract. Between May 1, 2019, and November 1, 2019, Applicant made \$5 monthly payments toward the debt. His payments were accepted by the creditor. (Item 2.) Effective February 28, 2020, he raised his monthly payment from \$5 to \$15. (AE A.)

Medical collection debt for \$686 (SOR ¶ 1.o)

A medical debt of \$726 from April 2016 was placed for collection. As of May 2018, the balance was \$686. (Item 5.) Applicant began repaying the debt at \$25 a month in approximately February 2019. (Item 4.) As of October 22, 2019, the balance was \$461 because he made nine months of payments at \$25 each. (Item 2.)

Medical collection debts for \$43 (SOR ¶ 1.i); \$100 (SOR ¶ 1.j); \$180 (SOR ¶ 1.k); \$199 (SOR ¶ 1.l); \$1,133 (SOR ¶ 1.m); \$229 (SOR ¶ 1.n); \$49 (SOR ¶ 1.p); \$35 (SOR ¶ 1.q); \$77 (SOR ¶ 1.r); and \$73 (SOR ¶ 1.s)

As of May 2018, Applicant owed medical collection debts of \$43 from September 2015; \$100 from December 2013; \$180 of a \$270 debt from December 2012; \$199 from December 2012; \$1,133 from August 2014; \$229 from August 2014; \$49 from October 2016; \$35 from October 2016; \$77 from August 2014; and \$73 from December 2013. (Item 5.) During his February 7, 2019 PSI, Applicant stated that he consolidated the bills in 2018, and was assigned an account manager in January or February 2019, who established a plan requiring him to make \$25 to \$35 monthly payments toward these debts. (Item 4.) On February 8, 2019, Applicant told the OPM investigator that he had arranged to make automatic payments of \$20 monthly toward these medical debts, which were from multiple knee surgeries. (Item 4.) In response to the FORM, Applicant provided a payment record showing automatic payments of \$20 on March 1, 2019, and \$10 monthly between April 1, 2019, and November 1, 2019, to the collection entity reportedly now holding the debt. (Item 2.) None of those debts were on his credit record with Equifax as of December 2019 (Item

7), even though they have not been fully satisfied. He is continuing to make \$10 monthly payments toward the medical debts. (AE A.)

Wireless telephone debt for collection for \$1,255 (SOR ¶ 1.u)

In August 2017, a wireless services provider placed a \$1,255 debt for collection. As of May 2018, the debt had not been paid. (Item 5.) During his February 7, 2019 PSI, Applicant said the debt was for his spouse's phone, although he was also on the account, and that his spouse cancelled the service prematurely. He denied knowing that the debt was in collections. (Item 4.) On February 8, 2019, Applicant told the OPM investigator that he had arranged to make automatic payments of \$20 monthly toward this loan deficiency. (Item 4.) In response to the SOR, Applicant indicated that the vendor "would not let [them] out of the unknowing contract we had with them." He made a \$20 payment that was processed by the creditor on March 1, 2019, and made \$5 monthly payments through January 2020. (Item 2.) Effective February 28, 2020, Applicant raised his monthly payments to \$15. (AE A.)

As of May 2018, Applicant was making timely payments on a closed credit-card account with a \$1,113 balance; on open credit-card accounts with balances of \$58, \$322, and \$1,371; on a joint vehicle loan obtained for \$16,726 in May 2017 with a current balance of \$16,115; and on a home-furnishings debt with a \$2,570 balance. (Item 5.)

During his February 7, 2019 PSI, Applicant attributed his financial difficulties to the decline in household income when he lost his job in October 2016 and then his unemployment between November 2017 and January 2018. He indicated that he was "trying to pay creditors here and there and playing catchup on past-due bills." His spouse works only occasionally as a photographer. (Item 4.) He provided no information about her income.

In its December 2019 FORM, the Government acknowledged Applicant's payments on his debts but found them to be "extremely low." The Government also expressed some concern because he was delinquent on his mortgage loan and car loan payments for the vehicle purchased in May 2017. As of December 2019, Applicant was \$1,997 past due on his mortgage loan; \$1,027 past due on the car loan obtained in May 2017; and \$225 past due on a home-furnishings account (balance \$2,862) that had been current for over two years until October 2019. In response to the Government's concerns, Applicant raised his monthly payments on some of his delinquencies effective February 28, 2020, to "the most [he] can pay to fit [his] budget." Concerning his home loan, he indicated that he brought it current with the funds borrowed from his retirement account, although the loan documentation shows that he requested the withdrawal on February 7, 2020, and the funds had not been disbursed as of February 8, 2020. He indicated that he was no longer behind on his car loan because he refinanced his loan to lower his monthly payment to \$251. Applicant made car payments of \$682 in September 2019, \$1,745 on December 23, 2019, and \$400 on December 30, 2019. A \$1,745 payment on December 24, 2019, was returned, and he paid nothing in October or November 2019. Account information for the vehicle loan shows that, as of February 6, 2020, \$758 was due on a loan balance of \$12,444. (AE A.)

Applicant did not explain why he fell behind on his mortgage and car loans. He also provided no specifics about his finances, including his household budget, which would indicate he has the means to make his student-loan payment initially due on March 20, 2020.

Applicant has been a lead communications technician on a military base for approximately two years. He supports all communications on the base, which includes telephone and fiber optic infrastructure. He works 50 to 55 hours most weeks, and is on call. He does not get paid for the on-call time. He indicates that he put two children through college and is “working on the next,” and that it is going to take some time for him to resolve his delinquent debts. (AE A.) Applicant submitted no evidence about the extent to which he covered college costs for his children.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant’s eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

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

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk

that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Section 7 of EO 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F: Financial Considerations

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

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

An applicant is not required to be debt free, but is required to manage his finances in a way as to exhibit sound judgment and responsibility. The 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.

Guideline F security concerns are established when an individual fails to pay financial obligations according to terms. Applicant defaulted on three student loans obtained initially for \$17,415, including the two loans in the SOR that were taken out for \$5,415 and \$8,500; \$9,546 on a loan for a car that was “totaled” in an accident; two wireless phone debts \$1,255 and \$2,095; a satellite television debt of \$438; credit-card debts of \$603, \$590, and \$517; and medical collection debts totaling \$2,804. Under AG ¶

19, disqualifying conditions 19(a), “inability to satisfy debts,” and 19(c), “a history of not meeting financial obligations,” apply.

The burden is on Applicant to mitigate the negative implications for his financial judgment raised by his delinquent debts. Application of the aforesaid disqualifying conditions triggers consideration of the potentially mitigating conditions under AG ¶ 20. One or more of the following conditions 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; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Regarding AG ¶ 20(a), the consumer credit debts became delinquent in 2017. Some of the medical debts were incurred more than five years ago, but there is no evidence any of them have been fully satisfied. Applicant’s debts are considered recent because “an applicant’s ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions.” ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)). AG ¶ 20(a) does not apply.

Applicant attributes his financial problems to his loss of about \$30,000 in annual income after his layoff in October 2016; to a period of unemployment from November 2017 to January 2018 after another layoff; and to his spouse’s vehicle accident in 2017. The unexpected job losses and accident are factors outside of his control that contributed to or caused his financial problems. Some \$2,804 of his collection debts stem from multiple surgeries that were likely medically necessary. AG ¶ 20(b) has some applicability. Even so, I have to consider whether Applicant acted in a responsible manner when dealing with his financial difficulties. See ISCR Case No. 05-11366 at 4, n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A significant component of financially responsible behavior is whether Applicant stayed in contact with his creditors and attempted to resolve debts. The evidence in that regard is somewhat

mixed. There is no evidence that Applicant made any effort to resolve his debts before he started his current job in March 2018. He made some payments on his student loans, of \$25 each in April and May 2018, and of \$20 in July 2018, but those payments were well short of the \$140 required under the loans' repayment terms. He made larger payments of \$75 each in November 2018 and December 2018, and apparently was not responsible for an error in his paperwork that led to a new income-based agreement requiring only \$5 a month. Starting in February 2019, he made \$10 payments toward his student loans, double what was required, but he did not explain why he was unable to resume his \$75 payments. Applicant began making \$25 payments toward his car-loan deficiency (SOR ¶ 1.b) in 2018, but his payments were not consistent. During his February 7, 2019 PSI, he indicated that he had arranged to make \$20 monthly payments. He made only one or two payments of \$20 before he dropped his payment to \$5 a month. Similarly, he told the OPM investigator that he would repay his \$2,091 mobile phone debt (SOR ¶ 1.d) at \$20 a month. He made only \$5 monthly payments. He handled his medical collection debts in SOR ¶¶ 1.i-1.n and 1.p-1.s similarly, reducing his payment to only \$5 after he had reportedly arranged to make \$20 payments. There is no evidence that Applicant made any payments toward the \$603 credit-card debt (SOR ¶ 1.e) before late October 2019. He made only \$5 monthly payments toward the satellite television debt (SOR ¶ 1.h) from May 2019 to February 2020. Not enough is known about Applicant's budget or his circumstances to make a reasonable assessment about whether he acted responsibly under the circumstances. He indicated in response to the FORM that he put two children through college, but he provided no information about his contributions to his children's educational expenses.

Applicant demonstrated some good faith under AG ¶ 20(d) by taking steps to address his delinquencies well before the SOR was issued. He began using the services of a debt resolution company some four to five years ago, initially in an attempt to lower the interest rates on his and his spouse's credit-card accounts. He has continued to make payments on his delinquent debts, although in minimal amounts that make it difficult to conclude that his financial problems are safely behind him, especially where, as of December 2019, he was \$1,027 past-due on his car loan obtained in May 2017 and \$1,997 past due on his mortgage loan. He offered no explanation for his failure to make his car payment in October 2019 and November 2019, or his mortgage payment in November 2019. As of December 2019, he was also \$225 past due on the furniture debt that had been current in May 2018. By February 2020, Applicant had brought his mortgage and car loans current, but he had to borrow from his retirement account to catch up on his house payment. He had to modify his car loan and add the delinquency to the end of his loan to bring that account current.

Favorable findings are returned on his student loans because they have been removed from default status. Applicant has also made enough progress toward repaying the credit-card debts in SOR ¶ 1.f (same debt in SOR ¶ 1.t) and 1.g to return favorable findings of those debts. While AG ¶ 20(d) has some applicability in that Applicant shows a willingness to resolve all of his delinquencies, it is not clear that Applicant will be able to make his scheduled student loan payment, even at his claimed modified level of \$203 per month. He has not demonstrated that he has the means to make all his promised debt payments without falling behind on other obligations. It is unclear whether any of the

medical collection debts, some of which are under \$50, have been fully satisfied. There is no clear indication that his financial problems are being resolved or are under control, and it was not shown that he has had any financial counseling that is required for mitigation under AG ¶ 20(c). AG ¶ 20(c) is not established.

Applicant is not required, as a matter of law, to establish that he has satisfied each debt in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. June 5, 2006). However, he is required under Appeal Board precedent to demonstrate not only that he has a plan to resolve his financial problems, but that he has taken significant actions to implement that plan. See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. July 6, 2006.) While he is credited with raising his debt payments from \$5 per month to \$15 per month on the debts in SOR ¶¶ 1.d, 1.h, and 1.u, and to \$25 per month on the car-loan deficiency in SOR ¶ 1.b, those new payments became effective on February 28, 2020, too recently for a showing that he can make those payments without stressing his budget to the point of falling behind on other accounts. The financial considerations security concerns are not adequately 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.

The security clearance adjudication involves an evaluation of an applicant's judgment, reliability, and trustworthiness in light of the security guidelines in the Directive. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). It is not intended as a debt collection process or designed to punish applicants for past mistakes or shortcomings. In exceptional cases, an administrative judge may grant initial or continued eligibility for a security clearance, despite the presence of an issue(s) that can be partially but not completely mitigated. Appendix C of Security Executive Agent Directive (SEAD) 4 grants DOHA administrative judges the discretionary authority to grant initial or continued eligibility for a security clearance *despite the presence of an issue(s) that can be partially but not completely mitigated* with the provision of additional security measures. See also Memorandum, Director for Defense Intelligence (Intelligence and Security), dated January 12, 2018 ("Appendix C identifies authorized exceptions that are to be utilized when making adjudicative decisions to grant initial or continued eligibility for access to classified information or to hold a sensitive position . . . Effective immediately, authority to grant

clearance eligibility with one of the exceptions enumerated in Appendix C is granted to any adjudicative, hearing, or appeal official or entity now authorized to grant clearance eligibility when they have jurisdiction to render the eligibility determination.”) I have considered the exceptions under Appendix C because of Applicant’s efforts to address his debts, but still have some doubts about Applicant’s financial judgment. It is particularly concerning that Applicant was delinquent on such important obligations as his mortgage and car loans as recently as early December 2019. Should Applicant continue to address his debts, he may be able to establish at some future date that his financial situation no longer presents a security concern. Much remains unknown about his expenses. For the reasons noted above, I am unable to conclude that it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance 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:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.e:	Against Applicant
Subparagraphs 1.f-1.g:	For Applicant
Subparagraphs 1.h-1.s:	Against Applicant
Subparagraph 1.t:	For Applicant
Subparagraph 1.u:	Against Applicant

Conclusion

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

Elizabeth M. Matchinski
Administrative Judge