



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 REDACTED) ISCR Case No. 19-02348
)
 Applicant for Security Clearance)

Appearances

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

06/18/2020

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant recently settled one past-due debt, but he still owes approximately \$31,125 in delinquent credit-card debt. His divorce in February 2009 compromised his finances, and he had to replace his belongings after a fire in June 2018, but he was not proactive about addressing his delinquencies. More progress is needed toward resolving his past-due debts. Clearance eligibility is denied.

Statement of the Case

On September 24, 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 October 15, 2019, Applicant submitted a detailed memorandum (Answer) with substantiating documentation in response to the SOR allegations, and he requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On January 24, 2020, Department Counsel indicated that the Government was prepared to proceed to a hearing. The case was assigned to me on January 29, 2020. On February 3, 2020, I received the case file and scheduled a hearing for March 6, 2020.

At the hearing, seven Government exhibits (GEs 1-7) and 13 Applicant exhibits (AEs A-M) were admitted in evidence without any objections. Applicant and two co-workers testified, as reflected in a hearing transcript received on March 17, 2020.

On April 28, 2020, without any objection from the Government, I re-opened the record for two weeks to give Applicant the opportunity to submit additional documentary evidence. By the May 12, 2020 deadline, Applicant submitted five documents, which were admitted without any objections as AEs N-R.

Findings of Fact

The SOR alleges under Guideline F that, as of September 24, 2019, Applicant owed four credit-card debts in collection for \$6,367 (SOR ¶ 1.a), \$6,344 (SOR ¶ 1.b), \$929 (SOR ¶ 1.e), and \$1,430 (SOR ¶ 1.f), and two loans charged off for \$14,282 (SOR ¶ 1.c) and \$2,852 (SOR ¶ 1.d). Applicant admitted the debts, which he explained were incurred because of attorney fees for his divorce that was finalized in February 2009; travel expenses to see his son when his ex-wife had primary custody; child support for his son until July 2014 when he became the custodial parent; non-payment of child support by his ex-wife since July 2014; and a June 2018 apartment fire in which he lost everything. He indicated that he had taken care of some debts not alleged in the SOR, and that he was in the process of contacting his creditors to arrange repayment terms for the SOR debts, starting with the smallest debt. (Answer.)

Applicant's admissions to the SOR debts are accepted and incorporated as findings of fact. After considering the pleadings, the exhibits, and the hearing transcript, I make the following additional findings of fact:

Applicant is a 40-year-old task manager. He began working as an engineering technician for a defense contractor in March 2011. He became an employee of his current employer in October 2014, when the company acquired the contract. He holds a DOD clearance, which he needs to maintain for his job. (GE 1; AE D; Tr. 14.) Applicant served honorably on active duty in the United States Navy, holding either a secret or top secret clearance, from July 1999 to February 2011 when he was discharged at the rank of petty officer second class (E-5) for failure to meet physical readiness standards. (AE H; Tr. 43.) He earned an associate's degree in April 2011 and two bachelor's degrees in April 2012 and April 2013, respectively. (GE 1.)

Applicant mismanaged credit extended to him during his early years in the Navy. He obtained two credit cards on which he reached his credit limit. After making the monthly minimum payments on the cards for about a year, he stopped paying on them. At the urging of his then fiancée in 2003, he contacted the entities pursuing him for collection and settled in full a charged-off MasterCard account for \$576 in March 2004 and a Visa account for \$339 in May 2005. He satisfied a \$2,301 debt in collection for a computer in January 2005. (GEs 2, 5-6.) Applicant did not report any delinquencies on his April 2005 security clearance application (SF 86) because he had paid or settled the debts, or in the case of a \$2,013 debt on his credit record for testing materials and books, he disputed the debt because he did not receive all the materials ordered. (GEs 5-6.) On January 31, 2006, the Department of the Navy Central Adjudication Facility (DON CAF) notified Applicant of its intent to deny him continued security clearance eligibility because of the delinquent accounts on his credit record and his failure to report them on his SF 86. (GE 5.) On February 28, 2006, Applicant provided evidence of debt resolution for the Visa, MasterCard, and computer debts, and explained that he was in financial counseling. (GE 6.) On April 10, 2006, the DON CAF granted Applicant a top secret clearance and eligibility for access to sensitive compartmented information (SCI), but cautioned him that any future derogatory information, especially of a similar nature, would be cause for immediate reconsideration of the favorable security determination. (GE 7; Tr. 39, 47.)

On January 31, 2006, Applicant and his ex-wife married in October 2003, had a son in January 2004, and divorced in February 2009. (GE 1; AE F.) He moved into military barracks on their separation in December 2007. (GE 1.) On their divorce, she became primary custodial parent of their son. Applicant was required to pay child support at \$168 per week and 51% of their son's daycare and medical expenses not reimbursed by insurance. (AE F.)

Applicant and his ex-wife had no joint bank deposits or other assets to divide. They retained individual responsibility for their own debts. Applicant retained possession of his vehicle, a 2004 model-year Jeep, purchased in October 2008 with a loan for \$25,249 from the credit union (SOR ¶ 1.c). (GE 4; AE F.) He also had some open credit-card accounts, including two accounts with a credit union opened in March 2008. He obtained a MasterCard (SOR ¶ 1.b) with the credit union to pay his divorce attorney's fees of more than \$4,000 (Tr. 80-81) and "inadvertently" opened a VISA account (SOR ¶ 1.a) at the same time. He "racked up" debt on the credit cards, "not making the smartest decisions." (Tr. 36.) Shortly after his divorce was final, he obtained a \$5,000 loan from the credit union (SOR ¶ 1.d) in March 2009 to cover the security deposit and purchase furnishings for an apartment that he planned to share with his then girlfriend. After he paid the security deposit, the plan fell through, and he rented an apartment on his own for the next year. (GEs 1, 4.) He used some of the loan money for living expenses, including food. (Tr. 61-64.)

In April 2010, Applicant relocated to another state for his military duties. For the next few years, he incurred mileage, gasoline, and entertainment expenses to see his son one weekend each month. (GE 1; AEs F-G, J; Tr. 35.) Three credit-card debts became seriously delinquent during this time: a \$2,022 debt from July 2010 (not alleged); an \$8,200

military exchange credit-card debt from December 2010 (not alleged); and a \$1,125 debt from April 2010 (SOR ¶ 1.f). (GEs 1, 4.)

On his discharge from the military, Applicant began working for a defense contractor in March 2011, but his monthly income was about \$1,600 less per month than what he had earned in the military. He continued to pay his child support and daycare obligations on time at \$375 every two weeks. (AEs J-K; Tr. 36.)

By early 2012, Applicant's Jeep was having mechanical difficulties. He tried to trade it in without success. In February 2012, he bought a 2006 model-year automobile with a loan for \$15,375, and abandoned his Jeep at the roadside. (AE F; Tr. 57-63.) He made timely payments for his new car (GE 4), but over the next three months, he stopped paying on his four accounts with the credit union (SOR ¶¶ 1.a-1.d). He testified that he was told by a car dealer to stop paying on the loan for the Jeep (SOR ¶ 1.c). (Tr. 60.) As of July 2013, his MasterCard and Visa accounts with the credit union were in collection for \$6,367 (SOR ¶ 1.a) and \$6,344 (SOR ¶ 1.b). His vehicle and personal loans with the credit union were charged off for \$14,282 (SOR ¶ 1.c) and \$2,852 (SOR ¶ 1.d), respectively. (GE 4; AE F.) He also owed credit-card collection balances to other creditors: \$929 from May 2012 (SOR ¶ 1.e), \$1,430 (placed for \$1,125) from April 2010 (SOR ¶ 1.f), and \$2,022 from July 2010 (not alleged). The \$8,200 credit-card debt (not alleged) that had been seriously past due had not been fully repaid. (GEs 1, 4.)

In late July 2014, Applicant became the primary custodial parent for his son. In a post-judgment decree, the court terminated Applicant's obligation to pay child support and ordered his ex-wife to pay \$30 per week in child support plus 38% of unreimbursed medical and daycare expenses for their son. (AE F; Tr. 37-38.) Applicant's ex-wife did not pay any child support or reimburse Applicant for any of their son's medical expenses. (AE J; Tr. 69-70.) Their son, who has been diagnosed with bipolar I disorder, had therapy for almost two years after Applicant became the primary custodial parent. (Tr. 67-70.) Applicant did not provide any details about the extent of his co-payments for his son's care.

In October 2014, Applicant began working for his current employer. (GE 1.) On December 2, 2016, Applicant completed and certified to the accuracy of an SF 86 for his ten-year update of his security clearance eligibility. (GE 1; Tr. 34.) In response to financial record inquiries concerning delinquency involving routine accounts, Applicant listed three credit-card debts of \$2,021 (\$2,022 in collection on his credit report, not alleged in SOR), \$6,303 (debt originally \$8,200, not alleged), and \$929 (SOR ¶ 1.e), and two medical debts of \$340 and \$916 (not alleged). He did not list his four delinquent debts with the credit union on his SF 86. Applicant cited his divorce and having primary custody of his son as the reasons for the debts. As for efforts to resolve the debts, Applicant stated with respect to each debt, "Currently developing long term goal to figure out a course of action to resolve this debt." He explained that his tax refunds were taken and applied to the \$8,200 credit-card debt. (GE 1; Tr. 49.) The evidence shows that he fully resolved that debt in June 2018, in part by paying \$400 a month from about September 2017 to June 2018. (GE 4; AE G; Tr. 37, 49-50.)

In December 2016, Applicant bought a new car with a loan of \$26,571, to be repaid at \$489 per month. As of May 2019, he had not been late in any of his payments and had paid down the loan balance to \$18,369. (GE 3.)

As of March 2017, Applicant's credit report showed no progress on the delinquent accounts in the SOR or on the \$2,022 debt (not alleged). Applicant was making timely payments on two active credit-card accounts: an account held since December 2004 with a current balance of \$1,906, and an account held since April 2016 with a current balance of \$1,445. (GE 4.)

In early June 2018, Applicant had a devastating fire in his apartment. He lost all of his possessions, including his financial paperwork. (GE 2; AE J; Tr. 35-36.) He had renter's insurance for \$20,000. He filed a claim for \$32,687 as the cost of replacement for his belongings. The insurer discounted the value to \$21,246 due to depreciation. He was paid \$1,000 upfront and \$19,000 when his claim was processed. (AE M; Tr. 35.)

Applicant and his son lived in a hotel room after the fire. Applicant had insurance that covered the difference between the rent he had paid for the apartment (\$900 per month) and the cost of the hotel room. (Tr. 87.) He was unable to find an apartment for rent at less than \$1,400 a month, so in July 2018 he bought a home built in 1880 that had been renovated. (AE J; Tr. 86.) He obtained a mortgage loan of \$152,518 to be repaid at \$1,169 per month. (GE 3; AE E.) On the advice of the mortgage company, some of the insurance payout from the fire went to reduce the balances on his active credit cards so that he would qualify for a mortgage. (Tr. 54-55.) About \$2,600 of the insurance payout was used for the down payment on his new home. (Tr. 84.)

Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM) on September 21, 2018. He explained he began repaying the \$8,200 credit-card delinquency after he was notified that his wages were to be garnished, and the debt was paid off in June 2018. He stated that he was paying off his smaller bills and working to address his larger ones. He acknowledged a credit card delinquency of \$1,430 on the account in SOR ¶ 1.f. He recognized the credit-union debts in SOR ¶ 1.c and 1.d as his debts, but indicated that they had been written off. He could not provide any information about the debts because he had not received any statements from the credit union in a long time. He did not dispute the \$929 debt in collection (SOR ¶ 1.e), but was unable to provide any information about that debt. Applicant described his current credit as decent, citing his recent house purchase and improved budgeting. (GE 2.)

On April 8, 2019, Applicant was re-interviewed by the investigator. He stated that he was "plugging away" at a \$583 collection debt (not alleged) that, according to his March 2017 credit report, had been placed for collection in October 2012. Applicant indicated that the \$2,022 credit card debt (not alleged) had been charged off in February 2014. He explained that he was trying to save money to repay his debts. Applicant admitted the credit-card delinquencies with the credit union (SOR ¶¶ 1.a-1.b) when confronted, and expressed his belief they had been charged off. He attributed those delinquencies to his divorce. (GE 2.)

As of June 2019, Equifax was reporting no delinquency trades on Applicant's credit record. The SOR delinquencies had been dropped from his credit record with no evidence of any payments. Applicant was making timely monthly payments of \$1,169 on his mortgage; \$489 on his December 2016 car loan; \$206 on an unsecured loan obtained in March 2019 for \$7,500; and on five active credit-card accounts with balances totaling \$6,701, which required a total of \$198 in monthly minimum payments. (GE 3.) His new home needed a new oven, refrigerator, doors, microwave, and central air conditioning, some or all of which he paid for with credit. (AE J.) He testified that the home also needed new doors and new basement-support jacking posts. (Tr. 85.)

Applicant continued to take on new credit as the delinquencies in the SOR went unresolved. In June 2019, he obtained a credit card with a \$750 limit from a home-improvement retailer. As of July 2019, the balance on that account was \$375. In August 2019, he opened a revolving charge account with a \$500 credit limit with another creditor. As of September 2019, the balance was \$264. (AE E.)

After his May 2019 annual review, Applicant was promoted at work to a task manager and engineering technician 5 position. His hourly wage increased from \$28 to \$32. His take-home pay is now "a little over \$1,900" every two weeks. (Tr. 44-45; 84.) He understands from his supervisor that he will no longer be employed if he does not retain security clearance eligibility. (Tr. 46.) He received income tax refunds of approximately \$200 each for tax years 2018 and 2019 because he did not claim his son as a dependent on his returns. (Tr. 50-51.) His ex-wife claimed their son on her returns. (Tr. 52.)

On September 24, 2019, the DOD CAF issued an SOR to Applicant because of unresolved delinquencies on six accounts totaling \$32,204. In his October 15, 2019 Answer, Applicant cited those debts which had been resolved for his clearance in 2006 and the \$8,200 credit-card debt satisfied in June 2018 as evidence that he has the initiative and willpower to pay his debts, "given the proper time." He indicated that he had spoken with a financial advisor to discuss options to resolve his debts; that he was in the process of contacting his creditors to work out payment plans, starting with the smallest debt first; and that he was considering a second job for extra income, but "it has been tough looking for one that would work for [his] work schedule, [his] son's needs, and to be able to still function mentally." (Answer.)

Applicant continued to make timely payments on his open accounts (his mortgage, car loan, unsecured loan, and credit cards). As of January 2020, he had eight open credit cards with balances totaling \$10,735, which was less than his credit limit of \$12,350, but with balances generally trending upward in recent months even with paying the monthly minimum or slightly more than the minimum on some accounts. (AE E; Tr. 79.) None of the three credit reporting agencies reported any delinquencies on his credit record. (AE E.)

In December 2019, Applicant formulated a plan to resolve his debts. (Tr. 73.) In January 2020, Applicant refinanced his car loan for \$17,394, which lowered his monthly payment from \$489 to \$298. (AE C.) In mid-February 2020, Applicant refinanced his mortgage for more than the \$150,755 he owed on his previous mortgage, but at a lower

interest rate than his previous loan. He was unable to recall the amount of his loan at his hearing. (AE A; Tr. 74, 78.)

As of his March 2020 hearing, Applicant had made no payments on any of the SOR debts. (Tr. 38, 55-56.) He expressed his intent to contact his creditors and work out payment plans “once things level out.” (Tr. 38.) He planned to take the funds saved from lowering his mortgage and car payments and pay the SOR debts, starting with the smallest (SOR ¶ 1.e). (Tr. 64-65, 71.) As to why he had not made any arrangements with the credit union to resolve the debts in SOR ¶¶ 1.a-1.d, despite the fact that the debts had been brought to his attention during his OPM interviews, Applicant responded:

So for those — I, being honest here, those were going to be later. I was going to take care of these smaller ones, first, once everything was adjudicated, the fire, the refinancing, and all that stuff, waiting on it leveling out. And every time I tried to do this, something comes up that costs, like, \$500, \$700, \$750. (Tr. 53.)

Applicant decided against seeking a second job because of his son and instead chose to refinance his car and mortgage loans to lower his monthly payments. His first payment on his new mortgage was not due until April 1, 2020. He expected a refund of more than \$700 in escrow funds from his previous mortgage, and a check for the difference between his new loan and the \$150,755 that went to satisfy his previous mortgage. (AE A; Tr. 73.) He testified that with those funds, he would be able to satisfy the debts in SOR ¶¶ 1.e and 1.f, if not also the debt in SOR ¶ 1.d. (Tr. 73-74.)

As of March 2020, he had \$5 in his savings account and \$1,400 in his checking account. He “essentially” lives from paycheck to paycheck. (Tr. 65-66.) He also indicated that his son gets emotional and sometimes has suicidal thoughts, and so he gives him \$20 here and there. (Tr. 67.) When asked for assurances that he would move forward and take care of his debts, Applicant admitted that he had not acted as he should have but that some of his co-workers know about the issue and “they have kept [him], try to keep the fire, for a lack of better term, underneath [his] butt.” (Tr. 72.)

On April 24, 2020, I informed Applicant that I would consider re-opening the record at his request to provide him an opportunity to supplement the record. There being no objections from the Government, on April 28, 2020, I re-opened the record for post-hearing submissions at Applicant’s request. Applicant was given a May 12, 2020 deadline.

On April 29, 2020, a collection entity for the debt in SOR ¶ 1.e notified Applicant that it would settle his \$929 balance for \$557 payable in five installments starting May 29, 2020. (AE Q.) On May 7, 2020, Applicant paid \$557 and the debt was settled in full. (AEs O, P, R.)

On May 8, 2020, Applicant began making payments of \$150 a month to the credit union toward resolving the debts in SOR ¶¶ 1.a-1.d. (AE N, P.) It is unclear how the credit

union plans to apply those payments; whether the credit union is willing to settle for less than the full balances owed on the four accounts; or when the debts will be resolved.

Work Performance

Evaluation Report and Counseling Records for his military performance from August 2004 to February 2011 reflect that Applicant was a hardworking and dedicated sailor with a flexible leadership style and positive attitude. He was often rated as a must promote or early promote despite having failed three physical fitness assessments in a four-year period. He sought increased responsibilities and routinely greatly exceeded standards in terms of professional knowledge. His military evaluation on his discharge shows that he remained productive and knowledgeable, needed minimal supervision, and showed tremendous initiative. He wanted to stay in the Navy, but he could not meet the physical readiness standards. (AE D; Tr. 43.) Applicant received several commendations while in the Navy for his duty performance between June 2000 and June 2006. He was awarded the Navy and Marine Corps Achievement Medal for his achievements from February 2006 to June 2006.

As a defense contractor employee, Applicant received a letter of commendation from the Navy in January 2013 for being instrumental in overhauling planned maintenance procedures for a submarine sonar system. He was lauded for his positive mental attitude, expert knowledge, and dogged attention to detail. (AE I.) At his annual review in January 2013, Applicant was given the highest rating in several categories and recommended for immediate promotion. (AE D.) In February 2013, his then employer recognized his outstanding performance with an award of excellence. (AE I.)

Applicant displayed similar dedication in his work for his current employer, who recognized his professionalism and contributions in April 2016 and June 2019. In June 2019, he received a \$100 cash award from his employer for an outstanding job as a quality assurance reviewer on a successful task that “cast a shining beacon on the work and ability of [his employer] to get the job done.” (AE I.) Additionally, Applicant received several emails in his current job from co-workers and his company’s military customer commenting favorably about his consistently high level of service and hard work. (AE B.) His annual performance appraisals since he began his current employment show that he is held in high regard for his initiative, job knowledge, leadership on the job, quality of his work, and teamwork. He has consistently exceeded his employer’s expectations and is considered a major contributor. As a task manager since 2017, he has significantly exceeded requirements as to performing his tasks in a time and cost-saving manner, handling extra assignments, and contributing to positive customer relations. He requires little supervision. (AE D.)

In October 2015, in late July 2016, and in December 2019, Applicant notified his employer of possible spillage of a classified drawing onto his workstation. In all instances, the document was determined to be unclassified but bore improper or unclear markings. (AE L.)

Two of Applicant's co-workers testified on his behalf. A co-worker on the technical engineering side of their workgroup has known Applicant since January 2016. He now works for the primary contractor who took over the contract in December 2019. While Applicant's employer is now a "minority partner," this co-worker and Applicant continue to work together. He attests that Applicant is very professional and a hard worker, including in his role on the recreation and morale committee at work. This co-worker knows little of the details of Applicant's financial situation, but he understands that Applicant is a single parent, had a fire, and purchased a new home. He believes Applicant will pay off his outstanding debts based on the responsible behavior he has demonstrated at work. He opined that Applicant has "a bright future" if he can keep his clearance. (Tr. 89-94.)

A project manager, who signed off on Applicant's most recent performance evaluations as a second-level supervisor, testified that Applicant has proven his capabilities over and over. Applicant is trusted by their government customer and upper management. This supervisor is aware that Applicant has had some financial difficulties, caused in part by his apartment fire and other circumstances not his fault. Applicant's financial issues first came to the manager's attention some time ago when a garnishment issue arose. He is aware that Applicant has also had to deal with issues involving his son, who lost two of his best friends to suicide in the last couple of years. Despite these struggles, Applicant gives his best effort every day. The supervisor believes Applicant is "on the right track" by refinancing his mortgage and car loans to free up funds so that he can pay his old debts. He believes Applicant will be able to resolve the debts over time. In this supervisor's opinion, should Applicant lose his security clearance, it would damage the company and their government customer who rely on his expertise. He considers Applicant to be one of his best technicians, if not the best, and attests that Applicant's handling of classified information is above reproach. He does not think Applicant is a security risk. (Tr. 98-108, 113.)

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. The evidence is undisputed that Applicant defaulted on the accounts in the SOR. He abandoned the vehicle purchased with the loan in SOR ¶ 1.c and then stopped paying on the loan. He claims he was at the advice of a car dealer who would not take the vehicle in trade. In addition to the SOR delinquencies totaling \$32,204, he became seriously delinquent on some other financial obligations, including credit-card debts for \$8,200 and \$2,022, which were not alleged in the SOR. Debts not alleged in the SOR cannot be considered for disqualifying purposes, but they show that his financial problems were more extensive than the SOR indicates. However, they may be relevant in assessing other issues, such as reform. In that regard, the evidence shows he paid off the \$8,200 with a final payment in June 2018, albeit apparently after he was told that his wages would be subject to garnishment for the debt.

The defaulted loans with the credit union (SOR ¶¶ 1.c and 1.d) have been written off, and there is no evidence he has been pursued for collection. As of a credit check in June 2019, none of the delinquencies alleged in the SOR were still on his credit record. The Fair Credit Reporting Act requires removal of most negative financial items from a credit report seven years from the first date of delinquency or if they become no longer legally collectible because of a state statute of limitations, which is longer. See Title 15 U.S.C. § 1681c. Debts may also be dropped from a credit report upon dispute when creditors believe the debt is not going to be paid or when the debt has been charged off. Even so, debts may still have security significance if they are no longer legally collectible or have been dropped from a credit record, particularly if they resulted from financially irresponsible behavior or remain unaddressed without reasonable justification. Applicant admits that he did not make the smartest decisions when he ran up the credit-card debts in SOR ¶¶ 1.a and 1.b. Even assuming that he acted on the advice of a car dealer, it was irresponsible of him to abandon his Jeep at the roadside and stop paying on his loan (SOR ¶ 1.c). Under AG ¶ 19, disqualifying conditions 19(a), "inability to satisfy debts, and 19(c), "a history of not meeting financial obligations," are fully established. Regarding AG ¶ 19(b), "unwillingness to satisfy debts regardless of the ability to do so," warrants some consideration because of his years of inattention to the debts in the SOR. Yet he has professed his intent to repay the debts in the SOR. He took some steps, albeit months after the SOR was issued, to free up some income so that he can make some payments toward the long overdue \$32,204 of debt of concern to the DOD, and he settled the debt in SOR ¶ 1.e for \$557 on May 7, 2020, which shows some willingness to repay his debts.

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 debts in the SOR became seriously delinquent more than five years ago. Nonetheless, 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 has a case for some mitigation under AG ¶ 20(b). His divorce caused or contributed to his financial problems in several aspects. Some \$4,000 of the \$6,344 credit-card debt (SOR ¶ 1.b) went to pay his divorce attorney. He paid child support at \$168 a week from February 2009 through July 2014, when he acquired primary custody of his son. Applicant has not received any child support from his ex-wife, which has been court-ordered at \$30 a week since July 2014. From 2014 to 2016, Applicant incurred therapy costs for his son, although he did not elaborate as to the extent of those costs. More recently, his financial situation was impacted by his apartment fire in early June 2018 in which he and his son lost much of their belongings. He recouped \$20,000 of his loss through insurance but estimates that he suffered unreimbursed losses totaling approximately \$12,000 in the fire.

Even when factors outside of his control contributed to or caused his financial problems, 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)). Applicant's evidence in this regard falls considerably short. He did not maintain

contact with his creditors identified in the SOR, and could not provide much information about his debts when interviewed by the OPM investigator. He certainly knew that he had obtained the loans and credit cards from the credit union, but assumed they had all been written off and so did nothing about them. Applicant knew or should have known after his OPM interview in September 2018 that the adverse entries then on his credit record were of concern to the DOD. He continued to take on new debt, including a \$7,500 loan in March 2009 and credit-card debts, while the delinquencies in the SOR went unaddressed. In June 2019, he obtained a credit card with a \$750 limit with a home-improvement retailer. As of July 2019, the balance was \$375. In August 2019, he opened a revolving charge account with a \$500 credit limit with another creditor. As of September 2019, the balance was \$264. It was not until December 2019 that Applicant established a plan to resolve his debts. Over the next two months, he refinanced his car and mortgage loans to free up funds that he could put toward his longstanding past-due balances. As of his March 2020 hearing, he had not contacted the creditors in the SOR to arrange for settlements or repayment terms.

Applicant's resolution of some credit-card delinquencies more than a decade ago when he was in the military carries little weight in demonstrating current good faith with respect to resolving the SOR debts. His resolution of the \$8,200 credit-card debt with a final payment in June 2018 warrants some consideration with respect to mitigating conditions AG ¶¶ 20(c) and 20(d). The Appeal Board has held that an applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. There is no requirement that an applicant make payments on all delinquent debt simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). However, the \$8,200 debt was resolved in part through application of his tax refunds and payments after being notified that the creditor intended to garnish his wages. It was not pursuant to any established plan that would have led to resolution of the SOR debts. Applicant's refinancing of his mortgage and car loans in early 2020 are significant first steps in implementation of a plan, but it is concerning that Applicant did not make any payments on any of the debts in the SOR before May 2020. The Government could reasonably expect that Applicant, who held security clearance eligibility knowing that financial problems would cause reconsideration of his security clearance, would have given more priority to addressing the issues of security concern. Applicant would have had a stronger case for mitigation under AG ¶ 20(c) or AG ¶ 20(d) had he been able to show that he made some efforts to repay his debts before his hearing, or at least shortly thereafter. The Appeal Board has repeatedly held that "an applicant who waits until his clearance is in jeopardy before resolving debts might be lacking in the judgment expected of those with access to classified information." See ISCR Case No. 15-03208 at 5 (App. Bd. Mar. 7, 2017).

As of his March 6, 2020 hearing, Applicant expected to be refunded approximately \$700 in escrow funds and to receive a payout of mortgage funds because his current mortgage is higher than his previous mortgage. It is unclear when or even if he received these funds. He settled the \$929 credit-card delinquency for \$557 on May 7, 2020, and a favorable finding is warranted as to SOR ¶ 1.e on that basis. However, the timing of that payment, and of his \$150 payment to the credit union toward the debts SOR ¶¶ 1.a-1.d, suggests that he might not have acted had I not informed him that I would consider post-

hearing submissions. Applicant now has a repayment plan with the credit union, but a first payment is not enough to demonstrate a track record from which I could reasonably conclude that he will give priority to repaying these debts. The Appeal Board has held that a promise to pay a debt in the future is not a substitute for a track record of paying debts in a timely manner. See e.g., ISCR Case No. 09-05390 at 2 (App. Bd. Oct. 22, 2010). Applicant has been making timely payments on his open credit-card and loan accounts, but his January 2020 credit report also shows an upward trend in his outstanding credit-card balances, which is concerning with respect to his financial stability and judgment. More progress is needed toward resolving his financial situation. The financial considerations 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.

By all accounts, Applicant has been an excellent performer at work. He exhibited an attentiveness to security issues, bringing his employer's attention to instances where he suspected a spillage of classified material. A security clearance decision is a risk assessment about an individual's trustworthiness, reliability, and judgment with regard to whether he or she can be relied on to appropriately handle and safeguard classified information. It is not a debt-collection procedure. At the same time, Applicant had been cautioned when his clearance eligibility was continued in 2006 that any future issues, especially of a financial nature, would be grounds for immediate reconsideration of his security clearance. He was on notice of the importance of fulfilling his financial commitments if he wanted to retain his security clearance. While his divorce in February 2009, the June 2018 fire, and other circumstances negatively impacted his finances, the Government could reasonably expect Applicant to have been more diligent in attempting to resolve the SOR debts. 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 conclude that it is not clearly consistent with the national interest to grant or continue security clearance eligibility for Applicant at this time.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

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

Conclusion

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

Elizabeth M. Matchinski
Administrative Judge