



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



In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 19-02618
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Aubrey M. DeAngelis, Esq., Department Counsel  
For Applicant: *Pro se*

07/29/2020

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**Decision**

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MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant did not present sufficient information to fully mitigate the security concerns raised by his delinquent debts, including \$28,058 in Federal income tax debts and two charged-off vehicle loans. He falsified his February 2018 security clearance application (SCA) by denying any financial delinquencies, including any Federal debts. Clearance eligibility is denied.

**Statement of the Case**

On October 31, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. The SOR explained why the DOD CAF was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DoD CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for*

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

On December 5, 2019, Applicant responded to the SOR allegations and requested a decision on the written record in lieu of a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. On April 21, 2020, the Government submitted a File of Relevant Material (FORM), including 16 exhibits consisting of its documentary evidence. DOHA forwarded a copy of the FORM to Applicant, and instructed him that any response was due within 30 days of receipt. Applicant received the FORM on May 13, 2020. No response was received by the June 12, 2020 due date.

On June 30, 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 July 10, 2020.

### **Evidentiary Rulings**

Department Counsel submitted as exhibits 6 and 7 to the FORM summary reports of personal subject interviews (PSIs) of Applicant conducted on August 7, 2007, and October 17, 2018. The summary reports were included in DOD reports 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 reports 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's attention was directed to the following important notice:

**The enclosed summaries of your Personal Subject Interviews (exhibits 6 and 7) are being provided to the Administrative Judge for consideration as part of the record evidence in this case. In your response to this [FORM], you can comment on whether the summaries accurately reflects [sic] the information you provided to the authorized investigator(s) and you may make any corrections, additions, deletions, and updates necessary to make the summaries clear and accurate. Alternatively, you may object on the ground that the reports are unauthenticated by a Government witness and the documents 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 summaries and may consider them as evidence in your case.**

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. 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 summaries, to comment on them, and to make any corrections, deletions, or updates to the information in the PSI summaries. Applicant did not respond to the FORM. In the absence of any comment or objections, it is reasonable to infer that he does not object to consideration of the summaries or the other documents relied on by the Government. Accordingly, Government exhibits (GE) 1 through 16, including Applicant's response to the SOR (GE 3), are accepted into evidence for consideration in this case.

**Findings of Fact**

The SOR (GE 1) alleges under Guideline F that, as of October 31, 2019, Applicant owed delinquent debts totaling \$62,518: charged-off automobile loan debts of \$7,305 (SOR ¶ 1.a) and \$5,917 (SOR ¶ 1.b); a collection debt of \$1,378 (SOR ¶ 1.c); a cable television debt of \$231 (SOR ¶ 1.d); utility debts of \$195 (SOR ¶ 1.f) and \$153 (SOR ¶ 1.g); a Federal income tax lien of \$28,058 (SOR ¶ 1.h); a loan debt of \$8,055 (SOR ¶ 1.i); an insurance debt of \$234 (SOR ¶ 1.l); a judgment debt of \$9,418 (SOR ¶ 1.y); and medical collection debt totaling \$1,574 on 15 accounts (SOR ¶¶ 1.e, 1.j-1.k, and 1.m-1.x). Under Guideline E, Applicant is alleged to have deliberately falsified his February 14, 2018 Electronic Questionnaires for Investigations Processing (e-QIP) (or SCA) by responding negatively to inquiries concerning any financial delinquency involving enforcement (any tax liens in the last seven years and current delinquency on any federal debt) (SOR ¶ 2.a), and to inquire concerning delinquency on routine accounts (any bills or debts turned over for collection and any account or credit card suspended, charged off, or cancelled in the last seven years) (SOR ¶ 2.b).

When he responded to the SOR, Applicant admitted the debts in SOR ¶¶ 1.a-1.b, 1.e, 1.g-1.h, and 1.j-1.y, but indicated that several of them, including all but one of his medical collection debts, have been paid (SOR ¶¶ 1.j-1.x); that he was making payments on his Federal tax debt and had reduced the balance to \$10,000 (SOR ¶ 1.h); and that the judgment case for \$9,418 was "closed" (SOR ¶ 1.y). Applicant denied the debts in SOR ¶¶ 1.c-1.d and 1.f, stating that they had been paid, and SOR ¶ 1.i, stating that the account was closed. Applicant admitted the alleged falsifications of his SCA and explained that he had not checked into his tax issue. He added that he was working diligently to correct all of his delinquencies; that the majority of his debts had been paid, and he was working towards paying off the others; and that he currently had only two delinquent accounts on his credit report. (GE 3.)

After considering the FORM, which includes Applicant's Answer to the SOR (GE 3), I make the following findings of fact:

Applicant is a 48-year-old employee of a defense contractor (company X) involved in ground-based operational surveillance systems. He has worked in the defense industry since his July 2010 discharge from the United States military. (GEs 5, 7.) Applicant married his current spouse in January 2018. His first marriage ended in divorce in June 2012. Applicant has a 24-year-old son from his first marriage with whom he has no contact. (GE 7.) Applicant has a 19-year-old stepson and a six-year-old adopted daughter with his current wife. (GEs 5, 7.)

On his graduation from high school in June 1990, Applicant enlisted in the United States Marine Corps. He was granted a DOD secret clearance for his military duties. Applicant and his first wife married in June 1995, and they apparently had financial problems from the start. On April 8, 1997, they filed a joint Chapter 13 bankruptcy petition. The evidentiary record about the bankruptcy consists of a case summary that shows it covered consumer debt and was discharged on October 23, 2001. The case summary does not show the creditors, debt amounts, or payments to a trustee. (GE 9.)

While serving at the rank of staff sergeant, Applicant completed an SCA on May 10, 2007, to renew his security clearance eligibility for his military duties. He responded negatively to all questions regarding issues of potential security concern, including financial record inquiries into whether he had been over 180 days delinquent on any debts in the last seven years and whether he was currently over 90 days delinquent on any debts. He indicated on his SCA that he and his first wife had been separated since December 3, 2002. (GE 4.)

On August 7, 2007, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM) about some adverse information that was apparently on his credit record at the time. Applicant explained that he and his spouse were in divorce proceedings, and she had his power of attorney. He denied knowledge of the debts on his credit record except for a car loan for a vehicle that was voluntarily repossessed around 2005. He indicated that he would investigate the eight accounts of concern on his credit record and attempt to pay his legitimate debts. With \$678 per month going to his estranged wife and \$1,886 in recurring expenses (rent, utilities, insurance, \$316 car payment, gasoline, food, cable and Internet, and cell phone costs), he estimated that he had about \$914 per month for discretionary expenses and to pay past-due debts. (GE 6.)

On October 18, 2007, the Department of the Navy Central Adjudication Facility (DON CAF) granted Applicant a secret clearance despite expressed concerns about the past-due debts then on his credit record and his failure to list those debts on his SCA. Applicant was advised of the seriousness of financial irresponsibility and required to immediately contact his command's financial counselor for assistance in making arrangements to resolve his delinquent debts. The DON CAF warned him that failure to address his delinquent debts would be cause for reconsideration of his eligibility for a security clearance. Applicant was also reminded that he is responsible for ensuring that any future SCAs are complete and accurate prior to their submission. (GE 8.)

In July 2010, Applicant was honorably discharged from the U.S. military. He worked as a trainer for a defense contractor for about a year before relocating in August 2011 to his current area for a position with company X. In December 2013, he accepted a training consultant position with another defense contractor. (GE 5.)

On February 14, 2018, Applicant completed and certified to the accuracy of an SCA on which he responded negatively to all the financial record inquiries, including the following:

**In the last seven (7) years** have you failed to file or pay Federal, state, or other taxes when required by law or ordinance?; **In the last seven (7) years**, [have] you had a judgment entered against you . . . ; **In the last seven (7) years**, [have] you had a lien placed against your property for failing to pay taxes or other debts . . . ; [Are] you currently delinquent on any Federal debt. . . . ; **In the last seven (7) years**, [have] you had bills or debts turned over to a collection agency? . . . ; and **In the last seven (7) years**, [have] you had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed? . . . (GE 5.)

As of March 1, 2018, one or more of the three credit reporting agencies were reporting that Applicant owed delinquent debt on several accounts. (GE 14.) The record evidence for each debt in the SOR is as follows:

SOR ¶ 1.a is a charged-off automobile loan debt for \$7,305. (GE 1.) Applicant and a co-borrower obtained a loan for \$13,295 in October 2014. The loan became delinquent in October 2016. In June 2017, the account was charged off for \$7,891. (GEs 14-16.) Applicant asserts that his ex-wife was supposed to make the payments (GE 7), but he did not explain why she would be responsible for a loan that credit reports show was opened after his divorce was final. After a \$1,457 payment in August 2018, the balance of the debt was \$7,305. (GE 16.) There is no evidence of any subsequent payments.

SOR ¶ 1.b is a charged-off vehicle loan for \$5,917. (GE 1.) Applicant obtained a \$25,525 loan for a truck in October 2013. Applicant made no payments on the loan after June 2015, and his truck was repossessed. In September 2015, his account was charged off for \$5,916. When interviewed by an authorized investigator for the OPM in October 2018, Applicant surmised that the \$5,916 must be the deficiency balance on his loan. He indicated that was never told that he had to pay the remaining balance on the loan after the truck was sold, but that he would pay the debt if required. (GE 7.) As of March 2020, Applicant had made no payments toward that debt, which was still adversely affecting his credit. (GEs 14-16.)

SOR ¶ 1.c is a collection debt for \$1,378. (GE 1.) Applicant moved in with his current spouse in November 2017. (GE 5.) In March 7, 2018, a default judgment was entered against Applicant for \$1,378 in restitution and court costs owed to a property management company. (GE 13.) As of April 2019, the debt was in collection with a \$1,378 balance. (GE 15.) He claims he paid the debt. (GE 3.) As of March 2020, the debt was no

longer on his credit report (GE 16), but the court was reporting no progress by Applicant on resolving the judgment debt. (GE 13.)

SOR ¶ 1.d is a satellite television debt in collection for \$231. (GE 1.) A delinquent balance of \$231 from March 2015 was placed for collection in March 2018. As of March 2019, the debt had not been paid. (GE 15.) The debt was no longer on his credit report as of March 2020. (GE 16.) Applicant claims it has been paid (GE 3), but he provided no corroboration for his assertion.

SOR ¶ 1.e is a medical collection debt for \$200. (GE 1.) In February 2018, a medical creditor placed a \$200 debt from September 2017 for collection. As of February 2020, the debt had not been paid. (GEs 15-16.)

SOR ¶ 1.f is a \$195 collection debt for utility services. (GE 1.) A \$195 debt from March 2018 was placed for collection in May 2019. (GE 15.) Applicant paid the debt on October 18, 2019. (GE 16.)

SOR ¶ 1.g is a \$153 collection debt for utility services with the same creditor named in SOR ¶ 1.f. (GE 1.) The account became delinquent in September 2015, and the creditor placed a \$152 balance for collection in November 2016. The debt had not been paid. (GEs 3, 15-16.)

SOR ¶ 1.h is a Federal tax lien for \$28,058. (GE 1.) On November 1, 2016, a Federal tax lien of \$28,058.76 was filed against Applicant for unpaid taxes and assessments of \$2,209.59 for tax year 2011, \$1,190.45 for tax year 2012, and \$24,658.72 for tax year 2013. (GEs 10, 14.) The Federal tax lien was issued to Applicant at the address where he resided from February 2011 to August 2011. (GEs 5, 10.) As of March 2018, the debt had not been paid. (GE 14.) Applicant denied any knowledge of the tax lien as of October 2018. (GE 7.) In December 2019, he asserted that he was currently making payments and that the balance was \$10,000 (GE 3.) He provided no evidence of any payments or a more recent assessment by the IRS to substantiate the claimed balance.

SOR ¶ 1.i is a loan in collection for \$8,055. (GE 1.) As of March 2018, Equifax was reporting that Applicant was a co-maker on a loan that was referred for collection in January 2019 because of nonpayment since November 2011. (GE 14.) The debt was no longer on his credit record as of April 2019. (GE 15.) Applicant disputes the debt and indicates that the account is closed. (GE 3.) He provided no proof that he is not legally liable for repayment.

SOR ¶ 1.j is a \$342 medical debt in collection. (GE 1.) A medical debt from October 2013 was assigned for collection in January 2014. As of February 2018, the debt balance of \$342 had not been paid. (GE 14.) The debt was no longer on his credit record as of April 2019. Applicant claims it has been paid (GE 3), but he submitted no evidence of payment.

SOR ¶ 1.k is a \$237 medical debt in collection. (GE 1.) The debt was reportedly in collection as of March 2018. (GE 14.) It was no longer on his credit record as of April 2019.

(GE 15.) Applicant claims it has been paid (GE 3), but he submitted no evidence of payment.

SOR ¶ 1.l is an insurance debt in collection for \$234. (GE 1.) The account became delinquent in June 2015 and was assigned for collection in September 2015. As of March 2020, the \$234 balance had not been paid. (GEs 14, 16.)

SOR ¶ 1.m is a medical debt in collection for \$125. (GE 1.) The debt, which is from February 2018, had not been paid as of March 2018. (GE 14.) As of April 2019, the debt was no longer on his credit record. (GE 15.) Applicant claims it has been paid (GE 3), but he submitted no evidence of payment.

SOR ¶¶ 1.n-1.x are medical debts in collection, ranging from a low of \$22 to a high of \$99 and totaling \$670. (GE 1.) The debts were incurred between October 2012 and October 2015. Applicant had not paid them as of March 2018. (GE 14.) The debts had been dropped from his credit record by April 2019. (GE 15.) Applicant claims all of those medical debts have been paid (GE 3), but he submitted no evidence of payments.

SOR ¶ 1.y is a \$9,418 judgment debt from February 2018. (GE 1.) On November 21, 2017, a creditor filed for a judgment against Applicant and a co-debtor. On February 1, 2018, a default judgment was entered against them for \$9,418.91. (GE 11.) The debt does not appear on Applicant's credit reports from March 2018 (GE 14), April 2019 (GE 15), or March 2020 (GE 16). On July 9, 2018, Applicant's then employer reported to the DOD CAF that the company had received an order of garnishment. (GE 12.) Later that month, Applicant became re-employed by company X, who won the contact from the company that filed the incident report. (GE 7.) Applicant was credited with payments totaling \$2,736.93 between July 2, 2018, and August 28, 2018, to reduce the debt balance to \$7,135. (GE 11.) It is unclear whether those payments were made through wage garnishment. Applicant presented no evidence of any subsequent payments toward the \$7,135 balance.

On October 17, 2018, Applicant was interviewed by an authorized investigator for the OPM about the delinquent accounts reported on his credit record as of March 2018 and about his failure to list them on his February 2018 SCA. He volunteered that he had several accounts placed for collection, including medical debts for allegedly unbilled co-payments, and that he also had a truck repossessed. His explanation for not listing any debts on his SCA was that he lacked information regarding the accounts. He asserted that his former spouse had opened accounts in his name without his knowledge, and she failed to pay the bills. He did not realize that his ex-wife had damaged his credit until after their divorce, when accounts became delinquent, and he could not afford to pay them. When confronted about the specific debts, Applicant stated that he first became aware of them when they went to collections. He claimed to have paid all but four of his medical debts in collection. He believed the \$342 medical debt (SOR ¶ 1.j) had not been paid, but indicated that he would address all of his remaining medical collection debts within the next few months. Applicant did not recognize the \$153 utility debt (SOR ¶ 1.g), the \$234 insurance debt (SOR ¶ 1.l), or the \$237 (SOR ¶ 1.k) and \$59 (SOR ¶ 1.t) medical debts. He surmised that the \$8,055 collection debt (SOR ¶ 1.i) was opened by his former spouse without his

knowledge. He claimed that the \$7,305 debt (SOR ¶ 1.a) was on a joint loan for his ex-wife's vehicle. He acknowledged that the \$5,917 deficiency balance (SOR ¶ 1.b) was for his repossessed truck. Applicant denied any knowledge of the Federal tax lien, but indicated that he would look into it. He asserted that he lives within his means and that he had not filed for bankruptcy or received any credit counseling. Applicant did not avail himself of opportunities during and after the interview to submit documentation regarding his financial issues. (GE 7.)

The DOD CAF issued an SOR to Applicant on October 31, 2019, because of the outstanding delinquencies on his credit record and because of his failure to list any past-due debts on his February 2018 SCA. (GE 1.) In response, Applicant stated in December 2019 that several of his debts had been paid (SOR ¶¶ 1.c-1.d, 1.f, 1.j-1.x), and that he had made payments to reduce the balance of his Federal tax delinquency to \$10,000. (GE 3.) He provided no documentation showing satisfaction of any debts, although his latest credit report (GE 16) corroborates the payment of the \$195 utility debt (SOR ¶ 1.f). Applicant disputed the \$8,055 debt (SOR ¶ 1.i), stating that it was "closed," although he provided no documentation to substantiate his dispute. He acknowledged the \$9,418 judgment debt, but indicated that it had been "closed." Applicant maintained that he was working diligently to correct all his debts, and that he had only two delinquent accounts currently on his credit record. Applicant responded "Accept" to the alleged falsifications of his February 2018 SCA, but added that he had not checked for the tax lien and was working on his tax debts. (GE 3.)

As of March 2020, Equifax was reporting three unpaid collection debts, of \$200 (SOR ¶ 1.e), \$153 (SOR ¶ 1.g), and \$234 (SOR ¶ 1.l), and the two charged-off vehicle loan balances of \$7,305 (SOR ¶ 1.a) and \$5,917 (SOR ¶ 1.b). Applicant was making timely payments of \$316 per month on an unsecured installment loan opened in May 2015 for \$12,352 and on a credit card opened in July 2019 with a credit limit of \$5,000. Applicant paid \$300, which was more than his monthly scheduled payment of \$101, to reduce the balance to \$5,048 as of February 2020. Applicant was also making timely payments of \$454 per month on a vehicle loan with a \$22,016 balance that was obtained in December 2019. (GE 16.)

## **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. Available court records, the notice of Federal tax lien, and credit reports substantiate Applicant's record of financial delinquency on the SOR debts, except perhaps for the debt alleged in SOR ¶ 1.i. Applicant's denial of the debts in SOR ¶¶ 1.c-1.d, 1.f because of payment is not a dispute as to his legal liability for or the delinquency of those debts. Applicant's March 2020 credit report shows that the debt in SOR ¶ 1.f was paid in October 2019. There is no evidence confirming payment of the other debts.

Applicant denies the \$8,055 loan debt (SOR ¶ 1.i). Under ¶ E3.1.14 of the Directive, the Government bears the burden of establishing controverted allegations. The Government's evidence consists of a single credit listing on Applicant's March 2018 credit report showing that he was a co-maker on the account, which was placed for collection in January 2017 after inactivity since November 2011. During his August 2018 PSI, Applicant surmised that the debt may have been incurred by his ex-wife without his knowledge. Under Equifax's reporting codes, a co-maker (or co-signer) is a guarantor and liable for repayment if the borrower defaults. Applicant has not accepted payment responsibility for the debt. He indicates that the account has been "closed," but he provided no details. Even assuming he has no legal liability for that debt, his delinquency in excess of \$50,000 on the other SOR accounts amply establishes disqualifying conditions AG ¶ 19(a), "inability to satisfy debts," and ¶ 19(c), "a history of not meeting financial obligations."

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;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and

(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.

AG ¶ 20(a) cannot reasonably apply, even though several of the accounts first became delinquent over four years ago. Applicant's Federal tax liability is for tax years 2011, 2012, and 2013. His medical collection debts were largely incurred between October 2012 and October 2015. He defaulted on his truck loan in SOR ¶ 1.b in 2015, and he and a co-borrower defaulted on the vehicle loan in SOR ¶ 1.a in 2016. The satellite television debt in SOR ¶ 1.d, the utility debt in SOR ¶ 1.f, and the insurance debt in SOR ¶ 1.i, are from 2015. However, none of those debts had been resolved as of his February 14, 2018 SCA. Financial judgments were entered against him in February 2018 (SOR ¶ 1.y) and March 2018 (SOR ¶ 1.c). His lack of documented progress on resolving the debts after he became aware of them precludes favorable consideration of AG ¶ 20(a). His debts are considered recent because an applicant's ongoing, unpaid debts evidence a continuing course of conduct. See, *e.g.*, ISCR 17-03146 at 2 (App. Bd. July 31, 2018) (citing *e.g.*, ISCR Case No. 15-08779 at 3 (App. Bd. Nov. 3, 2017)).

During his October 2018 PSI, Applicant stated that his ex-wife opened accounts in his name that he learned of after their divorce, and she left him with the bills, which he could not afford. While such a circumstance could be a mitigating factor under AG ¶ 20(b), Applicant did not provide proof of debts incurred in his name without his knowledge. According to the credit reports in the record, the car loan in SOR ¶ 1.a was not obtained until October 2014. He and his first wife divorced in June 2012. Applicant may not have known about the Federal income tax lien before his PSI. The lien was apparently mailed to him at an old address. However, he failed to explain how he could have been unaware of his tax liability. Even assuming that his ex-wife held a power of attorney during their marriage, he was divorced well before his Federal income tax returns for tax years 2012 and 2013 would have been due. Some \$24,658 of his Federal tax delinquency is for tax

year 2013. The medical collection debts also post-date his divorce. His claim that he was not billed for the debts is difficult to believe, given the number of accounts (15) referred for collection. He obtained the truck loan (SOR ¶ 1.b) in October 2013, more than a year after his divorce was final. It was not adequately shown that his default of his truck loan was caused by factors outside of his control rather than by financial irresponsibility. Furthermore, Applicant does not receive full mitigating credit under AG ¶ 20(b) because he did not establish that he acted reasonably with respect to resolving his old delinquencies. He indicated during his October 2018 PSI that he would investigate the debts on his credit record and arrange for repayment, but he presented no documentation of any such efforts.

Applicant's March 2020 credit report corroborates that the \$195 utility debt from March 2018 was paid in October 2019. Applicant claimed in December 2019 that he had also paid several other debts, including most of his medical debts and the \$1,378 debt owed to a former landlord. Given that most of his medical collection debts were small (less than \$100), he could have paid many of them. Yet it is difficult to accept his unsubstantiated claims of debt satisfaction for even those debts, given the issues about his credibility, not only because of his failure to report any delinquent debts on his SCA, but also because the court record shows no payments toward the \$1,378 as of March 2020. Moreover, even if he satisfied most of the medical collection accounts, he has not had any financial counseling, which is required under AG ¶ 20(c), and he has not made any payments toward the \$13,222 in charged-off vehicle loans (SOR ¶¶ 1.a-1.b) or towards the \$7,135 balance of judgment debt in SOR ¶ 1.y. While he is not required to establish that he has paid off each debt in the SOR, or even that the first debts paid be those in the SOR. See ISCR Case No. 07-06482 (App. Bd. May 21, 2008), the Appeal Board stated in ISCR Case No. 17-00263 (App. Bd. Dec. 19, 2018) that "an applicant must demonstrate a plan for debt repayment, accompanied by concomitant conduct, that is, conduct that evidences a serious intent to resolve the debts." AG ¶¶ 20(c) and 20(d) have minimal applicability.

AG ¶ 20(e) applies only to the debt in SOR ¶ 1.f, which was paid before the SOR was issued. Applicant provided no documentation to corroborate his dispute of the debt in SOR ¶ 1.i, so AG ¶ 20(e) does not apply to that debt. Applicant's unsubstantiated claims of tax payments to reduce his Federal income tax delinquency to \$10,000 as of December 2019 fall short of the evidence needed to establish mitigation of his significant tax liability under AG ¶ 20(g).

The security clearance adjudication is not a proceeding aimed at collecting an applicant's personal debts. It is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness with regard to his fitness or suitability to handle classified information appropriately. See ISCR Case No. 09-02160 (App. Bd. June 21, 2010). Applicant's March 2020 credit report contains some positive financial indicators. He has made timely payments of \$316 per month on an unsecured installment loan opened in May 2015 for \$12,352 and on a credit card opened in July 2019 with a credit limit of \$5,000, although as of February 2020, the balance on that account exceeded his credit limit by \$48. He was making timely payments on a vehicle loan obtained in December 2019 for \$22,351, but he has yet to establish a sufficient track record of timely payments on that account to guarantee that he can be counted on to make his \$454 monthly payments on

time. However, a reasonably accurate assessment of Applicant's financial situation cannot be made without knowing his present income and expenses. It cannot yet be determined that Applicant's financial difficulties are behind him. The financial considerations security concerns are not fully mitigated.

### **Guideline E: Personal Conduct**

The security concerns about personal conduct are articulated in AG ¶ 15:

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

AG ¶ 16 includes one condition that could raise a security concern and may be disqualifying in this case:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant responded negatively to all of the financial record inquiries on his February 14, 2018 SCA, including questions concerning whether, in the last seven years, he had a lien placed against his property for failure to pay taxes or other debts; whether he was currently delinquent on any Federal debt; whether he had any bills or debts turned over to a collection agency in the last seven years; and whether, in the last seven years, he had any accounts or credit cards suspended, charged off, or cancelled for failing to pay them on agreed upon terms. Without an opportunity to confront Applicant in person and assess his credibility on the issue, it is particularly difficult to discount the objective evidence of financial delinquency that clearly should have been reported on his SCA. Applicant does that dispute that he answered "No" to the lien and Federal debt inquiries, but explained that he "had not checked." He denied any knowledge of the tax lien when he was interviewed by an OPM investigator in October 2018. There is no evidence that Applicant ever received the Notice of Tax Lien. Applicant had moved from the address on the notice in August 2011, and the forwarding time would have expired as of the issuance of the tax lien in November 2016. That being said, it is difficult to believe he did not know that he owed back taxes for 2013, given the IRS assessment of \$24,658 for that year. Applicant clearly knew that he had lost a truck to repossession within the seven years preceding his February 2018 SCA. AG ¶ 16(a) applies.

AG ¶ 17 provides conditions that could mitigate security concerns in this case:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

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

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(f) the information was unsubstantiated or from a source of questionable reliability.

AG ¶ 17(a) and AG ¶ 17(e) have some applicability because Applicant volunteered during his October 2018 PSI that he had accounts go into collections and had a vehicle repossessed. A generalized admission to financial delinquency some eight months after his SCA falsification does not fully mitigate the personal conduct security concerns in this case, however. He indicated that he had paid all but four of his medical collection accounts but that he was unable to recall details about his accounts. He claimed not to know why a tax lien was issued against him. Applicant was advised by the DON CAF in October 2007 that he is responsible for ensuring that any future SCAs be complete and accurate prior to their submission. His false denials to the SCA's financial record inquiries in February 2018 raise considerable concerns about his reform. His explanation for denying any debts on his February 2018 SCA—that he lacked all the information about the debts—does not justify his knowing omission of delinquent debts. Persuasive evidence is lacking on the issue of whether the Government can reasonably rely on Applicant's representations. The personal conduct security concerns are not 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.

Applicant was cautioned by the DON CAF in October 2007 that financial irresponsibility has serious implications for his continued security clearance eligibility. He largely attributes his record of subsequent financial delinquency to his ex-wife, who left him with some bills that strained his finances, but several accounts were opened by him after his divorce.

It was incumbent on Applicant to show that his financial situation is sufficiently stable and not likely to present an ongoing security concern. As discussed above, too many unanswered questions exist about his financial situation. Moreover, because Applicant chose to have his security clearance eligibility evaluated without a hearing, I was unable to assess his sincerity and demeanor. The record evidence left me with doubts about Applicant's candor with respect to his SCA omissions. He presented no employment or character references attesting to his judgment and reliability in handling his personal and work affairs. The Appeal Board has repeatedly held that the government need not wait until an applicant mishandles or fails to safeguard classified information before denying or revoking security clearance eligibility. *See, e.g.,* ISCR Case No. 08-09918 (App. Bd. Oct. 29, 2009, citing *Adams v. Laird*, 420 F.2d 230, 238-239 (D.C. Cir. 1969)). 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.

## 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.e:	Against Applicant

Subparagraph 1.f:	For Applicant
Subparagraphs 1.g-1.y:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-2.b:	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 or continue eligibility for a security clearance for Applicant. Eligibility for access to classified information is denied.

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Elizabeth M. Matchinski  
Administrative Judge