



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



In the matter of: )  
 )  
 REDACTED ) ISCR Case No. 19-02763  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Raashid S. Williams, Esq., Department Counsel  
For Applicant: *Pro se*

06/30/2020

**Decision**

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant did not present sufficient information to fully mitigate the security concerns raised by his delinquent debts, including a \$17,614 charged-off loan debt that is not resolved. He falsified his February 2019 security clearance application by denying that he owed any delinquent debts. Clearance eligibility is denied.

**Statement of the Case**

On December 13, 2019, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA 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 DCSA CAF was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DCSA CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (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 January 17, 2020, 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 February 27, 2020, the Government submitted a File of Relevant Material (FORM), including five items consisting of its documentary evidence. DOHA forwarded a copy of the FORM to Applicant on March 3, 2020, and instructed him that any response was due within 30 days of receipt. Applicant received the FORM on March 9, 2020, and he submitted a timely response to the FORM that was received by DOHA on March 20, 2020. On March 23, 2020, the Government indicated it had no objection to his response.

On May 26, 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 June 8, 2020.

### **Evidentiary Rulings**

Department Counsel submitted as Item 4 to the FORM a summary report of a triggered enhanced personal subject interview (PSI) of Applicant conducted on May 2, 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 Interview (PSI) 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(s) and you can 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 (bold in original).

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, to comment on the PSI, and to make any corrections, deletions, or updates to the information in the PSI. In his FORM response, Applicant referred to a statement he made during his subject interview to explain his financial issues. He did not otherwise comment on the PSI or the summary report of his PSI. Given his reliance on an explanation he provided during the PSI, and the absence of any objections, it is reasonable to infer that he does not object to consideration of the summary. Accordingly, FORM Items 1 through 5 are accepted into the record as Government exhibits (GEs). Applicant's response to the FORM, which includes documentation of debt repayment, is admitted as Applicant exhibit (AE) A.

### **Findings of Fact**

The SOR alleges under Guideline F that, as of December 13, 2019, Applicant owed delinquent debt totaling \$24,646 on eight accounts (SOR ¶¶ 1.a-1.h). Under Guideline E, Applicant is alleged to have deliberately falsified his February 13, 2019 Electronic Questionnaires for Investigations Processing (e-QIP) (or security clearance application (SCA)) by responding negatively to inquiries concerning whether he had any debts turned over for collection in the last seven years and whether he had any accounts or credit cards suspended, charged off, or cancelled in the last seven years (SOR ¶ 2.a).

When Applicant answered the SOR allegations, he admitted each of the debts but indicated that the debts in SOR ¶¶ 1.d and 1.h had been paid. He answered "I admit" regarding the negative responses to the financial inquiries on his SCA, but he then described it as "simply a mistake on [his] part," and added that he "was not trying to hide anything." (GE 2.)

Applicant's admissions to the debts are accepted as findings of fact. His response to SOR ¶ 2.a is seen as an admission to having responded negatively to the inquiries but without intention to falsify. After considering the FORM, which includes Applicant's Answer to the SOR (GE 2), and Applicant's response to the FORM (AE A), I make the following additional findings of fact:

Applicant is a 32-year-old senior electrical technician who has worked for a defense contractor since February 2019. He requires a DOD security clearance for his position. (GEs 3-4.) He was apparently issued an interim security clearance that was withdrawn. (GE 2; AE A.) Applicant earned an associate's degree in September 2011. He has been married since November 2013. He has two sons who live with him and his wife. The younger son, who was born in January 2017, is adopted. (GEs 2-3.) It is unclear whether Applicant's

older son, who does not bear his surname, is his biological son, adopted, a stepson, or a foster child. If the birthdates listed on the SCA for Applicant and this son are correct, Applicant was only 13 years old at the time of his son's birth.

Applicant was unemployed while pursuing his associate's degree at a technical institute from September 2009 to September 2011. He obtained federal student loans of \$3,500 and \$6,000 in January 2010, a private student loan for \$5,955 in July 2010, and a federal student loan for \$18,742 in September 2010. Applicant worked as a master technician for a commercial electronics company from January 2012 to November 2014, when he left the job voluntarily to move from state X to state Y. He was unemployed for the next six months. From May 2015 to August 2017, Applicant was employed as a test technician for a power company. In August 2017, he and his family moved back to state X, and Applicant returned to work for the commercial electronics company for the next 14 months. In October 2018, Applicant and his family moved to their current residence, and he started a new job as a quality technician for a technology company. Applicant began his current employment in February 2019 at a higher salary than in his previous employments. (GEs 3-4.) The record contains no information about his previous earnings. As for his current income, Applicant indicated only that he makes less than \$2,919 a month. It is unclear whether he was referring to his gross or net income. (AE A.)

On February 13, 2019, Applicant completed and certified to the accuracy of an SCA for his current employment. He responded negatively to all of the financial record inquiries, including the following questions concerning delinquency involving routine accounts:

**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 3.)

As of March 5, 2019, one or more of the three credit reporting agencies were reporting that Applicant's federal student loans with balances of \$27,205 and \$15,100 were in deferment, although they had been seriously past due in early 2015. Some accounts had been paid in collection back in March 2016, but Applicant was reportedly delinquent on the eight accounts alleged in the SOR. (GE 5.) The record evidence for each debt in the SOR is as follows:

SOR ¶ 1.a is a charged-off loan debt for \$17,614. (GE 1.) Applicant and a joint borrower (likely his spouse) obtained a vehicle loan for \$26,819 in October 2016 and fell behind in their payments from the start. The loan was past-due 30 days in November 2016 and 90 days in April 2017 before the vehicle was repossessed. The loan was charged off for \$17,614 in June 2017. (GEs 2, 4-5; AE A.) Applicant explained that he fell behind in his payments because his wife "had to quit her job to take care of [their] son," and other family needs took priority. (GEs 2, 4.) On January 17, 2020, in response to the SOR, Applicant indicated that he would contact the creditor to establish a repayment plan. (GE 2.) He had no payment plan established as of his March 2020 response to the FORM. The collection

entity now handling the debt is only willing to accept payments “on a 6-month schedule, which would amount to \$2,919 per month,” which is more than he earns in a month. (AE A.)

SOR ¶ 1.b is a charged-off student loan for \$2,744. (GE 1.) Applicant obtained an unsecured guarantee loan for \$5,955 in June 2010 with repayment at \$22 a month. A debt of \$2,744 was charged off after no account activity since September 2013. As of January 2019, the account was \$1,531 past due with a balance of \$2,744. (GE 5.) After he received the SOR, Applicant arranged to repay the debt at \$80 a month. He made his first \$80 payment on March 10, 2020. If his clearance eligibility is reinstated, he anticipates that he will be able to make a larger payment to settle the debt, which now stands at \$2,663. (AE A.)

SOR ¶ 1.c is a joint deposit-related debt for \$156. (GE 1.) Applicant and a joint owner opened a bank account in January 2012. After the account was closed, \$156 in overdraft fees were charged off in April 2016. (GEs 4-5.) Applicant recognized the debt when questioned about it during his May 2019 PSI and indicated that his spouse was staying in touch with the creditor and trying to settle the account. (GE 4.) Yet, when he answered the SOR in January 2020, Applicant stated that he had previously been unaware of the debt and indicated he would contact the creditor to make a payment. (GE 2.) Applicant’s spouse paid \$156.63 by credit card on February 28, 2020, which resolved the debt. (AE A.)

SOR ¶ 1.d is a cellular phone debt in collection for \$3,257. (GE 1.) Applicant recalled during his PSI that when he switched providers, his new provider promised to pay off his old contract for him, but failed to do so. (GE 4.) His account was assigned for collection in June 2017 after no activity since April 2015. As of February 2019, the debt had not been paid. (GEs 4-5.) Applicant asserted in response to the SOR on January 17, 2020, that the debt had been paid, and that the account was closed as of January 4, 2020. (GE 2.) Applicant’s March 2020 credit report shows that the debt was legally satisfied for less than the full balance. A statement from the collection entity shows that he paid \$651 in full settlement of the debt on August 15, 2019. (AE A.)

SOR ¶ 1.e is a phone debt in collection for \$300, which Applicant indicates was incurred in state Y and then not paid after he and his family moved back to state X in August 2017. (GE 2.) His account was assigned for collection in December 2018. As of February 2019, the debt had not been paid. (GE 5.) Applicant attributes the debt to him and his family living beyond their means (GE 2), although he provided no specific information in that regard. Applicant paid the debt on February 26, 2020. (AE A.)

SOR ¶ 1.f is a cable television debt in collection for \$260, which was a bill for service in state Y that went unpaid after he and his family moved back to state X. (GE 2.) His account was assigned for collection in December 2018. As of February 2019, the debt had not been paid. (GE 5.) Applicant provided documentation showing that he paid \$137 by credit card on February 26, 2020. Experian is reporting the debt as paid after collection as of March 1, 2020. (AE A.)

SOR ¶ 1.g is a medical debt in collection for \$163 from August 2015. His account was assigned for collection in May 2016. As of February 2019, the debt had not been paid. (GE 5.) On January 17, 2020, Applicant stated that he would contact the collection entity and pay the debt this year. (GE 2.) Applicant satisfied the debt on February 26, 2020. (AE A.)

SOR ¶ 1.h is a collection debt for \$152 incurred with a credit services company. His account was assigned for collection in January 2019 after no activity since September 2018. As of February 2019, the credit bureaus were reporting the debt as unpaid. (GE 5.) In response to the SOR, Applicant provided a confirmation number as evidence that he had paid the debt on February 28, 2019. (GE 2.) Creditor documentation submitted by Applicant in response to the FORM corroborates the debt was paid in full in February 2019. (AE A.)

On May 2, 2019, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM) about his delinquent accounts and his failure to list them on his SCA. Applicant acknowledged that he had some financial issues, but he explained that he did not know specific information about his accounts because his spouse handled their finances. He indicated that his debts had been paid, but when confronted with the adverse information on his March 2019 credit report, Applicant did not dispute that he still owed the debts in SOR ¶¶ 1.a-1.d. He provided some details about the debts, including that the debt in SOR ¶ 1.a was owed on a loan for a repossessed vehicle, and indicated that his spouse was trying to settle those debts. He did not recognize some collection debts, including the debts in SOR ¶ 1.e, 1.f, and 1.h but expressed his belief that those three debts and a medical bill not covered by insurance (SOR ¶ 1.g) had been paid. Applicant explained that his financial issues were due to “hard times” and not to living beyond his means, carelessness, or financial irresponsibility. He cited his geographic relocations and changes of jobs, which put him in the position of having to catch up on expenses. He described his current financial situation as stable, and indicated that with the income from his current job, he can save money to pay off his collection debts. Applicant expressed a willingness to pay all his debts. He admitted that he had not had any financial counseling or utilized any debt consolidation services, but he and his spouse were working on rebuilding their credit, saving money, and paying their bills. In response to why he had not listed any delinquencies on his SCA, Applicant stated that he was unsure how to report the information because he did not feel that his situation fit the specific sections, and there was no place for comments to explain his financial situation. (GE 4.)

The DCSA CAF issued an SOR to Applicant on December 13, 2019, because of the outstanding delinquencies listed on his March 2019 credit report and because of his failure to list any past-due debts on his February 2019 SCA. (GE 1.) In response, Applicant admitted the debts and stated in part:

These charges were from a particularly difficult time in life, we were living paycheck to paycheck and any time something happened we had to make a sacrifice. We would have to choose which bills to pay at which time. At that time we were not able to regularly catch back up. At my current position I am doing much better with my bills and keeping up with things. (GE 2.)

Applicant indicated on January 17, 2020, that he would make arrangements to repay the defaulted car loan (SOR ¶ 1.a) and that he would pay his other outstanding debts (SOR ¶¶ 1.b-1.c and 1.e-1.g) this year. He stated that the debts in SOR ¶¶ 1.d and 1.h had been paid, and provided a confirmation number for the latter but no documentation of payment for either debt. Applicant explained that the defaulted car loan did not appear on his credit report and that he would have taken care of the debts sooner had he the means to do so. He expected to be able to address his remaining financial issues “once [his] clearance is reinstated.” As for his failure to list any debts on his SCA, Applicant stated:

This was simply a mistake on my part. I spoke to an investigator about this issue in April [sic] of last year, before my interim clearance was issued. I was not trying to hide anything and am honest about my financial struggles. (GE 2.)

In the Government’s February 27, 2020 FORM, Department Counsel noted the lack of specific information in the record about circumstances that apparently stressed Applicant’s finances, and the absence of corroborating or supporting documentation from Applicant showing resolution of any of the SOR debts. In response on March 18, 2020, Applicant provided a recent credit report and receipts showing that he had an established plan to repay the debt in SOR ¶ 1.b and had resolved the debts in SOR ¶¶ 1.c-1.h, as noted above. He explained that the collection entity currently holding his defaulted car loan (SOR ¶ 1.a) wants payments that he cannot afford and is unwilling to work with him. Applicant indicated that he would continue to try to resolve the account, and added:

As I stated in my subject interview, these issues were from a time that I was not in a financially stable position to settle these debts. In my current position, with my clearance reinstated, I can continue to make smart financial decisions and work on my credit. (AE A.)

The record contains little detail about Applicant’s income, expenses, or savings. As of March 2010, Experian reported that he had a \$129 current balance on a low-limit credit-card account opened in August 2019 and a \$2,880 balance on a joint installment loan obtained for \$3,221 in August 2019 that was being repaid on time at \$129 a month. His federal student loans were in deferment with balances of \$35,937 and \$15,850. They were rated as current but had been 120 days or more delinquent in May and June 2014 and again in January and February 2015. In February 2017, Applicant paid off a vehicle loan obtained for \$24,299 in May 2015. The car loan for the repossessed vehicle (SOR ¶ 1.a) was still on his credit report as past due for \$17,614 (SOR ¶ 1.a). His credit score was 594 as of March 18, 2020, which is considered “fair.” (AE A.)

## 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's record of financial delinquency on the eight accounts in the SOR 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; and

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

Applicant defaulted on his student loan (SOR ¶ 1.b) in 2013 and on a cell-phone contract (SOR ¶ 1.d) in 2015. He did not pay a \$163 medical bill (SOR ¶ 1.g) incurred in August 2015. Overdraft fees on a joint bank account were charged off in April 2016 (SOR ¶ 1.c). In 2017, he defaulted on a car loan (SOR ¶ 1.a), and on cell phone (SOR ¶ 1.e) and cable television (SOR ¶ 1.f) bills incurred in state Y. His account with a credit-services company (SOR ¶ 1.h) from September 2018 went to collections in January 2019. While some of the debts were incurred more than five years ago, none of the debts in the SOR had been resolved as of his February 13, 2019 SCA. Applicant's 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)). AG ¶ 20(a) does not apply.

During his PSI, Applicant stated that his financial problems were caused by "hard times" and not by living beyond his means, carelessness, or financial irresponsibility. He indicated that his financial issues started because he relocated and changed jobs, which put him in a position of having to catch up on expenses. AG ¶ 20(b) has some applicability in that while Applicant voluntarily left his job with the commercial electronics company in November 2014 to move to state Y, he likely did not expect to be unemployed for the next six months. The \$3,257 cell phone debt became delinquent around that time. Even so, some concern arises about his financial judgment, given he apparently relocated without a job offer in place. Moreover, his unemployment from November 2014 to May 2015 does not explain his default of his student loan in 2013 while he was gainfully employed by the commercial electronics company. Low income was apparently a factor in his student-loan default, but he provided little detail about his financial situation at that time. With scant information in the record about his income or expenses, it cannot be determined whether he acted reasonably under his circumstances at that time. His scheduled student loan payment was only \$22 a month. AG ¶ 20(b) could partially mitigate his default of the car loan (SOR ¶ 1.a) in that he lost his spouse's income when she quit work to care for their son. However, the evidence suggests that he obtained a loan that he could not afford to repay from the start. He was behind in his loan payments even before their adopted son was born in January 2017.

Moreover, Applicant does not receive full mitigating credit under AG ¶ 20(b) because he did not establish that he acted responsibly under the circumstances with respect to contacting his creditors to resolve old delinquencies after he moved back to state X and full-time work at the commercial electronics company in August 2017. Additionally, neither he nor his spouse for him paid the final bills for cable television and phone service in state Y, and a \$152 debt from September 2018 went to collection in January 2019.

Regarding AG ¶¶ 20(c) and 20(d), Applicant is credited with paying the \$152 debt (SOR ¶ 1.h) in late February 2019, after he completed his SCA but before his PSI. He paid \$651 in full settlement of the \$3,257 cellular phone debt (SOR ¶ 1.d) in August 2019, before he received the SOR. In late February 2020, after he answered the SOR, he or his spouse for him satisfied the debts in SOR ¶¶ 1.c and 1.e-1.g. The timing of resolution of financial problems is an important consideration in evaluating mitigation under AG ¶ 20(d). In ISCR Case No. 17-03229 at 6 (App. Bd. June 7, 2019), the Appeal Board stated that “an applicant who takes action to resolve his financial problems only after being placed on notice that his or her clearance is in jeopardy may lack the judgment, and self discipline to follow rules and regulations over time or when there is no immediate threat to his or her own interests.” Applicant did not provide documentation of income or circumstances that could reasonably justify his delay in addressing those debts. He apparently earns less than \$2,919 per month, which is not a considerable income with a family of four. Even so, a component of financially responsible behavior is whether an applicant remains in contact with his creditors, and Applicant’s evidence in that regard is lacking. He would have had a much stronger case in mitigation had he provided documentation showing ongoing efforts to resolve the credit issues discussed during his May 2019 PSI. AG ¶ 20(c) cannot fully apply because he has not had any financial counseling that is required for full mitigation. However, favorable findings are made with respect to the debts in SOR ¶¶ 1.c-1.h because they have been satisfied or legally settled.

Regarding the car-loan deficiency (SOR ¶ 1.a) on which no payments have been made, and the student loan (SOR ¶ 1.b) that he has begun repaying at \$80 a month, Applicant is not required to establish that he has paid off each debt in the SOR, or even that the first debts paid be those in the SOR. See ISCR Case No. 07-06482 (App. Bd. May 21, 2008). 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.” Applicant has an established arrangement for his student loan, and he made his first payment. Because of his delay in addressing the debt, he lacks a sustained track record of payments. Nonetheless, the monthly payment is affordable, and his resolution of the debts in SOR ¶¶ 1.c-1.h provide some assurance that he will make his agreed upon payments for his student loan. AG ¶ 20(d) has some applicability to that debt. Applicant has no repayment arrangement in place for the \$17,614 car debt that continues to adversely affect his credit score. The debt is now held by a collection agency unwilling to accept payments in an amount Applicant can afford.

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 paid off a \$24,299 car loan in February 2017. As of March 2020, he had only two open credit accounts other than his deferred Federal student loans: a credit card with a \$129 balance and an installment loan with a \$2,880 balance. Both accounts are current. He does not have a record of extensive reliance on credit. It is unclear when his Federal student loans totaling some \$41,775 will no longer be deferred or whether he can afford to make his student loans payments at that time. A reasonably accurate assessment of Applicant's financial situation cannot be made without knowing his present expenses. Apparently, the creditor owed the \$17,614 debt is pursuing Applicant for collection, given the debt is now held by a collection entity, and it remains on his credit report. His progress toward resolving his other past-due accounts weighs in his favor, but the \$17,614 delinquency is substantial in relation to his income. With so little information in the record about his financial situation, it cannot be determined whether Applicant's financial difficulties are behind him or will not reoccur. 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 13, 2019 SCA, including questions concerning whether, in the last seven years, he had any bills or debts turned over to a collection agency, 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. Applicant admits that he answered "No" to the inquiries, but he asserts that it was "simply a mistake on [his] part," and he "was not trying to hide anything." The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).

Applicant's denial of intentional falsification has to be evaluated in light of other evidence of record, including his March 2019 credit report which substantiates the delinquencies, and evidence showing that he knew about some of the debts. When Applicant was interviewed by the OPM investigator in May 2019, he initially stated that he knew he had some financial issues but he did not know what they were because his spouse handles their financial matters, including paying the bills. He indicated that his wife had been working on correcting their credit, and had paid off his debts. Yet, when confronted with the specific debts listed on his March 2019 credit report (GE 5), Applicant recognized the \$17,614 debt as the deficiency on a loan for a vehicle that had been repossessed (SOR ¶ 1.a). He also recognized his student loan delinquency (SOR ¶ 1.b), the bank overdraft debt (SOR ¶ 1.c), and the \$3,257 cell-phone debt incurred when he changed providers, and his new provider failed to pay off his old contract (SOR ¶ 1.d). He no longer claimed that his debts had been paid. Instead, he stated that his spouse was trying to settle those debts. He then explained that he had not listed those accounts on his SCA because there was no place to explain his financial situation, which he did not feel fit into the specific sections. Applicant did not elaborate about his understanding of the financial record inquiries, which in addition to the inquiries about collection and charged-off debts, include questions about any possessions or property voluntarily or involuntarily repossessed in the last seven years, and any loan defaults in the last seven years. Even if Applicant mistakenly thought his spouse had paid his debts, it would not relieve him of his obligation to report them on his SCA. It is simply not plausible that Applicant could believe in good faith that none of the financial record inquiries applied to his financial situation, given he had a car repossessed for nonpayment in 2017, within two years of his February 2019 SCA. 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. 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 the DOD through its investigation became aware that Applicant has had financial problems. However, it is difficult to fully apply AG ¶ 17(a) because although Applicant admitted to the OPM investigator that he had financial issues, he initially claimed he did not know what they were. It was only after he was confronted with the information of outstanding delinquency on his credit record that he admitted he had lost a car to repossession and that his spouse was still working on settling some of his accounts. Concerning AG ¶ 17(e), it is unclear if anyone apart from his spouse knows about his financial situation. AG ¶¶ 17(b) and 17(f) were not shown to have any applicability. AG ¶ 17(c) warrants some consideration because Applicant's SCA falsification was "infrequent" and not repeated during his PSI. He took some positive steps in reform under AG ¶ 17(d) by providing details of his delinquent accounts to the investigator after confrontation, but he has yet to provide a credible explanation for his omission of known debts from his SCA. Even assuming that Applicant tasked his spouse with correcting his credit, he had an obligation to ensure that he responded accurately to the questions on the SCA, and he failed in that regard. The security concerns about his personal conduct 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 requested a decision on the written record, so it was incumbent on him 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.

This decision should not be construed as a determination that Applicant cannot or will not attain the reform and rehabilitation necessary to justify the award of a security clearance in the future, especially if he is able to demonstrate a track record of financial stability, and of reliability and trustworthiness with regard to his representations. However, based on the evidence before me, a clearance grant is not warranted 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:	Against Applicant
Subparagraphs 1.b-1.h:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	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