



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



In the matter of:)
)
) ISCR Case No. 14-00162
)
Applicant for Security Clearance)

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

07/31/2014

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant fell behind on some financial obligations during periods of low wage employment. He has started addressing his \$20,000 in past-due debt, but it is too soon to conclude that his financial problems are behind him. Drug involvement concerns raised by his abuse of non-prescribed narcotics from 1999 to 2005 and again from June to September 2009 are mitigated by the passage of time with no intent of future drug abuse. Clearance is denied.

Statement of the Case

On March 7, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, Financial Considerations, and Guideline H, Drug Involvement, and explaining why it was unable to find it clearly consistent with the national interest to grant a security clearance for him. The DOD CAF took the action under Executive Order 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 adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

Applicant responded to the SOR allegations on April 4, 2014. He did not indicate whether he wanted a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On April 14, 2014, the DOD CAF sent an email to Applicant asking whether he wanted a hearing or a decision based on the administrative record. On April 17, 2014, Applicant indicated that he wanted a judge to review his information.

On May 7, 2014, the Government requested a hearing pursuant to paragraph E3.1.7 of the Directive. By letter dated May 13, 2014, Department Counsel provided discovery of the potential Government exhibits (GEs) to Applicant. (Tr. 19.) On May 15, 2014, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On May 27, 2014, I scheduled a hearing for June 17, 2014.

I convened the hearing as scheduled. Four Government exhibits (GEs 1-4) were admitted into evidence without objection. A chart prepared by Department Counsel as a supplement to his oral closing argument was marked as a hearing exhibit (HE 1). Applicant testified, as reflected in a transcript (Tr.) received on June 27, 2014. At Applicant's request, I held the record open for two weeks for him to submit documentary evidence. On June 30, 2014, Applicant submitted evidence of debt repayment arrangements. On July 9, 2014, Department Counsel indicated that the Government had no objection. Accordingly, Applicant's June 30, 2014 email correspondence was accepted into the record as Applicant exhibit (AE) A, and the repayment documents were admitted as AEs B and C.

Summary of SOR Allegations

The SOR alleges under Guideline F that as of March 7, 2014, Applicant owed \$19,990 in delinquent debt (SOR 1.a-1.w). About \$3,026 of the debt was for medical services, and \$11,988 was owed on three student loan accounts in collection. Under Guideline H, Applicant is alleged to have used controlled narcotics (Percocet, Oxycodone, Hydrocodone, and Vicodin) without a prescription from 1999 to 2005 and from June 2009 to September 2009 (SOR 2.a). When he answered the SOR, Applicant admitted the debts and the prescription drug abuse as alleged. He spent many years living from paycheck to paycheck, and he had no medical insurance when many of the debts were incurred. Applicant added that he was seeking debt consolidation assistance to resolve his credit issues quickly, and that he no longer accepts a written prescription for pain medications. At his hearing, he testified that he did not recognize the debts alleged in SOR 1.a, 1.d, and 1.s. He disputed the balances claimed by the creditors in SOR 1.b and 1.u.

Findings of Fact

After considering the pleadings, exhibits, and transcript, I make the following findings of fact:

Applicant is a 33-year-old radiographer, who has been working for a defense contractor since January 2014. He came to his employer initially as a subcontractor around May 2013. (GEs 1, 3; Tr. 23, 26, 48.) Applicant has not previously held a DOD security clearance. He cannot progress in his department without a security clearance. (Tr. 24.)

Applicant and his spouse have been together over ten years, although they did not marry until April 2013. (Tr. 21, 25.) They have a son, who is now four years old. Applicant's spouse has two other sons ages 13 and 14, whom she raises with Applicant. Her boys' biological father does not pay any child support. (GE 1; Tr. 25, 55.)

In 1999, Applicant was prescribed narcotics to treat pain from a fracture. Over the next six years, he sporadically consumed 10 to 15 pills of Oxycodone (including Percocet) and Hydrocodone (including Lortab and Vicodin), which had not been prescribed for him, to cope with joint pain.¹ He obtained the narcotics from his spouse, who had a prescription. (GE 3.)

Applicant earned his graduate equivalency diploma (GED) in June 2000. It is unclear if Applicant was employed before June 2003, when he began working as a service assistant at a car dealership. From June 2004 to September 2004, Applicant was employed in the warehouse of a furniture outlet. From September 2004 to January 2005, he worked as a delivery driver for a company that rents household furnishings. In January 2005, he took a sales position with an automobile dealer, but he stayed only four months. From April 2005 to June 2008, Applicant worked as a vendor for a merchandising company. He took a second job on evenings and weekends at an amusement park in June 2008, and shortly thereafter, he left the merchandising company to work as a security supervisor for the amusement park full time. (GEs 1, 3; Tr. 35.) Applicant earned relatively low wages in these jobs. He had no health insurance coverage when employed by the amusement park, and he incurred medical expenses for physician and emergency room treatment. (Tr. 22, 35-36.) Several medical debts went unpaid because providing for his family took priority. (GEs 2-4.)

In June 2009, Applicant was injured in a recreational contest. Applicant was prescribed Vicodin. After he finished his prescription, he took Percocet, at least two pills a day until September 2009, which he obtained from friends at no cost. (GEs 1, 3; Tr. 56-57.) Applicant obtained his own prescription for Percocet in September 2011, although on a couple of occasions from 2010 to 2011, he may have consumed some narcotics from a friend's prescription to deal with his back pain.² (Tr. 60-61.)

¹ During his October 2013 subject interview, Applicant reportedly indicated that he had abused prescription medications between 1999 and 2005, ingesting sporadically 10 to 15 pills of "Percocet, Laura Tabs, Oxycodone, Hydrocodone, and Vicodin." (GE 3.) "Laura Tabs" is likely Lortab, which, like Vicodin, is a hydrocodone-combination narcotic. Percocet is an oxycodone drug.

² Applicant testified that the last time he used a prescription drug without a valid prescription was "in probably 2009 to 2010." He went on to state, "I can recall where a doctor didn't prescribe and I found out, you know, my buddy had some left over and I asked him, hey, can I have them." (Tr. 60-61.) Applicant gave estimated dates of June 2009 to June 2011 for his prescription drug abuse in the last seven years. (GE 1.) When asked about

In addition to being employed full-time at the amusement park, Applicant took online courses at a for-profit university, about four hours a week between July 2009 and June 2010.³ In June 2009, he incurred a \$245 fee with the educational institution, which was paid after being charged off. In July 2009, he opened two federal student loans, of \$3,500 (SOR 1.q) and \$6,000 (SOR 1.o). In March 2010, he took on another \$3,500 in federal student loan debt (SOR 1.p). Applicant testified that he applied for a deferment of his student loans some time ago, but he received no response, presumably because he had moved. He did not follow up because he could not pay the loans. (Tr. 22, 37-38.) Around May 2012, the student loan debts were referred for collection. (GE 2.)

Applicant's spouse stopped working in 2009, while she was pregnant with the couple's son. Applicant found it difficult to maintain full-time employment as well as his online studies, so he stopped taking classes after completing one academic year. (Tr. 22.)

In April 2010, Applicant began working in his present field of industrial radiography. (GEs 1, 3; Tr. 23.) He continued to struggle financially on an hourly wage of \$15, which was not enough to support a family of five and pay all his debts. Around May 2013, Applicant's services were contracted out by his then employer to his current employer. He rented a residence while continuing to pay all the household expenses (e.g., groceries, utilities, and rent) for his spouse and children, who did not move with him. (Tr. 27.) Applicant also incurred transportation costs to visit his family, including two to three trips by plane and one by car. (Tr. 28-29.)

On September 5, 2013, Applicant completed and certified to the accuracy of an Electronic Questionnaire for Investigations Processing (e-QIP). He responded "Yes" to inquiry into whether he had misused any prescription drug in the last seven years. Applicant disclosed that he had abused an "UNKNOWN" prescription drug between June 2009 and June 2011, and added, "I WAS HURT IN A RECREATIONAL CONTEST AND USED MANY OF MY FRIENDS PERSCRPTION [sic] PAIN MEDS." Applicant also answered "Yes" to delinquencies involving routine accounts. He listed \$3,169 in medical bills in collection (SOR 1.g-1.m) with a repayment plan arranged; \$1,134 in defaulted student loan debt (SOR 1.o-1.q); a \$771 credit card debt in collection that he had not known about before he obtained his credit report in 2013 (SOR 1.u); and a \$1,354 disputed cable services debt (SOR 1.b), which he asserted was paid in July 2012. (GE 1.)

that drug abuse during his interview, Applicant indicated that after his prescription for Vicodin expired, he obtained Percocet from some acquaintances. He took at least two Percocet pills a day from June 2009 to about September 2009, but that he had prescriptions for the Percocet from September 2009 to June 2011. (GE 3.) Applicant's abuse of narcotics may well have continued to 2010 or 2011, although the evidence is inconclusive.

³ Applicant indicated that he took the online classes from approximately September 2008 to June 2009. (GEs 1, 3.) However, available credit information indicates that he took on student loan debt in July and August 2009. It is likely that he took the classes one year later than he indicated on his e-QIP. He testified at his hearing that he was enrolled in classes "right before [his son] was born." (Tr. 37.) His son was born in October 2009. (GE 1.)

As of September 19, 2013, Applicant's credit record was showing several delinquent debts. In addition to the debts Applicant reported on his e-QIP, he reportedly owed a \$31 collection debt (SOR 1.a); a \$508 cable services debt from March 2011 (SOR 1.c); a \$450 unidentified medical debt from March 2012 (SOR 1.d); a \$370 power company debt from December 2007 (SOR 1.e); a \$593 medical debt placed for collection in July 2013 (SOR 1.f); a \$308 natural gas debt from December 2006 (SOR 1.n); \$147 in gym membership fees incurred before 2010 (SOR 1.r); medical debts of \$80 (SOR 1.s) and \$100 (SOR 1.t) in collection; \$291 for a television from 2008 (SOR 1.v); and \$843 for a washer and dryer from 2008 (SOR 1.w.) (GE 2.)

On October 15, 2013, Applicant was interviewed about his prescription drug abuse and his delinquent accounts by an authorized investigator for the Office of Personnel Management (OPM). Applicant indicated that he had misused prescription drugs in addition to that abuse disclosed on his e-QIP. He explained that he had sporadically consumed 10-15 pills of opiate-based narcotics from 1999 to 2005 from his spouse's prescription. Concerning his more recent drug abuse, he obtained Percocet without a valid prescription at times between June 2009 and June 2011 to alleviate pain throughout his body. Applicant denied any intent to abuse a prescription drug in the future. He had no current contact information for the three "acquaintances" who supplied him with narcotics from their prescriptions. (GE 3.)

About his disclosed financial issues, Applicant indicated that he owed a \$3,169 medical debt in collection to a local hospital for treatment received in June 2005. He arranged to repay the debt at \$100 a month. The \$771 debt on his e-QIP was for consumer credit purchases. He planned to resolve the student loan, credit card, and \$1,354 cable services debts by the end of 2013. When confronted about the additional delinquencies on his credit record, Applicant did not dispute the debts identified in SOR 1.a, 1.c-1.d, 1.f, 1.n-1.p, and 1.s, but he had no information about the debts. He did not dispute the medical debts in SOR 1.g-1.m, in that he had listed the aggregate balance of those accounts on his e-QIP. Applicant denied knowledge of a collection balance owed the power company in SOR 1.e. He indicated that the \$1,134 debt listed on his e-QIP was a student loan debt in collection, but also that the \$1,134 debt was the total of the \$291 and \$843 collection balances alleged in SOR 1.u and 1.v. Applicant attributed his debts to low-paying periods of employment, and he expressed his intent to contact all his creditors and bring all debts current. (GE 3.)

In January 2014, Applicant became a full-time employee of the defense contractor at an hourly wage of \$27.04. (Tr. 23-24.) Applicant saw it as an opportunity to better himself, provide for his family, and address his debt. (Tr. 23, 26.) In early March 2014, Applicant and his family were reunited. Applicant incurred about \$800 in U-Haul costs and \$400 to \$500 for fuel to drive his family north. (Tr. 27-29.) They sold what could not fit into the U-Haul, so they needed some furnishings for their new residence ("living room place to sit, we got a washer and dryer and just some of the boys' bedroom stuff we had to leave behind"). (Tr. 51.) Applicant pays \$80 a week for the washer and dryer. (Tr. 52-53.)

On March 7, 2014, the DOD CAF issued an SOR to Applicant alleging delinquent debt and prescription drug abuse. On receipt of the SOR, Applicant obtained his credit record and began contacting the listed creditors to verify his debts. (Tr. 34.) As of May 13, 2014, Equifax Information Services was reporting delinquent debt balances totaling \$17,692, which included the following balances: SOR 1.b (\$1,354), 1.c (\$508), 1.d (\$450), 1.e (\$370), 1.o (\$8,038), 1.p (\$149), 1.q (\$4,222), 1.u (\$803, disputed), 1.v (\$291), and 1.w (\$843). Medical balances of \$57 and \$407 from May 2010 had been placed for collection in March 2014. (GE 4.)

As of his hearing on June 17, 2014, Applicant did not recognize the \$31 collection debt (SOR 1.a) or the medical debts in SOR 1.d and 1.s. (Tr. 31, 33, 39.) He disputed the balance of the cable services debt (SOR 1.b) on the basis that he had returned equipment for which he was being charged. (Tr. 32.) He also disputed the credit card delinquency (SOR 1.u) in that he had not used the credit card. Applicant claimed that the washer and dryer debt (SOR 1.w) had been paid. (Tr. 40.) Applicant admitted that he had not made any payments on his delinquent debts, including his acknowledged debts. (Tr. 31.) He was not sure about the best means to address his accounts. Applicant and his spouse discussed possibly obtaining professional assistance from a credit counselor to consolidate his debt. He did not consider bankruptcy a viable option because his debt is manageable. (Tr. 22, 50-51.) He expressed plans to take care of all his delinquencies within the next two years. (Tr. 24.)

On or before June 19, 2014, Applicant contacted the assignee collecting the medical debts identified in SOR 1.g-1.m. Applicant was informed that he could not consolidate the debt, but rather that he would have to satisfy each debt in full separately. (AE A.) The assignee agreed to accept two payments of \$50 each, due on June 27, 2014, and on July 27, 2014, to satisfy a \$100 debt in collection placed by a hospital (likely SOR 1.j). (AE C.) Applicant provided no evidence showing that he made the first payment by the due date. On June 30, 2014, he indicated that he was working diligently to improve his credit standing. (AE A.)

Applicant has been working on third shift seven days a week since at least January 2014. He expects overtime to be "pretty steady for probably the next year or two." His take-home pay is \$1,700 a week with his overtime earnings. Applicant and his family rent a house at \$1,800 a month (Tr. 41-42), which is about what he had been paying for two residences before his family joined him in March 2014. He testified that his utility costs are lower now that he does not have to cover two separate households (Tr. 28), but also that the electricity costs of \$300 to \$320 per month are "killing" him. Applicant is on a budget plan for heating where he pays \$165 per month for oil. Groceries run about \$250 a week and gasoline about \$60 a week. Applicant and his spouse pay about \$120 for cable services and \$250 for cell phones a month. (Tr. 43-44.) Applicant pays \$45 every week for car insurance, which is automatically deducted from his wages. (Tr. 46)

Applicant and his spouse have one car. In January 2014, Applicant purchased a 2004 model-year vehicle, which he financed through a \$10,208 loan. Applicant pays \$302 per month on the loan. Applicant has not missed any payments. (GE 4; Tr. 42-43.) For the

past year, Applicant's spouse has been paying \$100 per month toward her student loans, which are apparently delinquent. Applicant does not know the total of his spouse's student loan debt. (Tr. 44, 56.) A paralegal, she is currently looking for work. She has been out of the workforce since 2009. (Tr. 30.)

Applicant attributes some of his and his spouse's financial problems to poor budgeting on their part. (Tr. 46.) He was behind on their natural gas bill in May 2014. (Tr. 50.) Applicant has about \$450 in checking account deposits and nothing in savings. (Tr. 47.)

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(c), 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 access to classified information will be resolved in favor of 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 Executive

Order 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 concern about financial considerations is set forth in AG ¶ 18:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The SOR alleges that Applicant owed on 24 delinquent accounts, totaling \$19,990 in outstanding debt, as of March 7, 2014. Financial judgment concerns arise under AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations” because of Applicant’s delinquent accounts. Due to interest on the credit card debt and the student loans, his total delinquency was approximately \$20,000 as of May 2014.

When Applicant answered the SOR, he admitted all the delinquent debts. However, after reviewing his credit report and contacting some of his creditors, he was unable to verify the debts in SOR 1.a, 1.d, and 1.s. He disputes the balance claimed by the cable company in SOR 1.b in that he is being charged for cable equipment which he returned. Applicant also denies that he owes the credit card delinquency in SOR 1.u, claiming he never used the account. In addition, he asserts that he paid off the washer and dryer debt covered in SOR 1.w.

AG ¶ 20(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,” is satisfied only with respect to SOR 1.a. Neither the \$31 debt in SOR 1.a nor the \$80 medical debt in SOR 1.s was on Equifax’s May 2014 report of Applicant’s credit (see GE 4). While I recognize that a creditor may not list a debt with all three credit bureaus, Equifax was the sole credit agency reporting the debt in SOR 1.a on Applicant’s credit as of September 2013, and it has been dropped from his credit record by Equifax. The medical debt in SOR 1.s was listed as an active collection debt by Trans Union as of September 2013. The medical debt in SOR 1.d is on his September 2013 and May 2014 credit reports. Applicant admits that he incurred several medical debts in the past, which he could not pay. The cable debt in SOR 1.b and the credit card debt in SOR 1.u are listed as past due

on his credit record as of May 2014.⁴ He presented no documentation to corroborate that he turned in the cable equipment and that he did not incur the credit card debt. Applicant listed the credit card debt on his e-QIP. Without any evidence proving payment of the \$843 debt in SOR 1.w, which was apparently for a washer and dryer, AG ¶ 20(e) is also not satisfied as to that debt. The debt is still on his credit record as an outstanding collection debt as of May 2014.

Concerning the other mitigating conditions, AG ¶ 20(a), “the behavior happened so long ago, was so infrequent, or occurred under circumstances that it is unlikely to recur and does not cast doubt on the individual’s current, reliability, or good judgment,” applies only in that some of the debts were incurred some time ago. Last activity on the credit card debt (SOR 1.u) was in February 2008. The utility debts in SOR 1.e and 1.n are from December 2007 and December 2006, respectively. Yet his student loan default is relatively recent. Medical debts of \$407 and \$57 (not in SOR) from May 2010 were referred for collection in March 2014.⁵ Moreover, he had made no payments on his long overdue accounts as of his hearing on June 17, 2014. AG ¶ 20(a) does not mitigate the financial judgment concerns raised by unaddressed delinquency.

Applicant’s financial problems were caused in part by low-paying work and a period without health insurance. Applicant provided no detail about his wage earnings with the amusement park, but some of the medical debts (e.g., 1.h, 1.i, 1.m) were incurred during that employment, when he had no medical coverage. Many of his other debts, including some medical accounts, were referred for collection after he switched fields to industrial radiography in April 2010. His wage was only \$15 an hour, which was insufficient to both support his family of five and cover all of his debt obligations, including his student loans. AG ¶ 20(b) is implicated with respect to incurring the delinquencies:

(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, or a death, divorce or separation), and the individual acted responsibly under the circumstances.

⁴ In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government’s obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he] is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted).

⁵ The DOHA Appeal Board has long held that the administrative judge may consider non-alleged conduct to assess an applicant’s credibility; to evaluate an applicant’s evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; to decide whether a particular provision of the Adjudicative Guidelines is applicable; or to provide evidence for a whole person analysis under Section 6.3 of the Directive. See, e.g., ISCR Case No. 03-20327 (App. Bd. Oct. 26, 2006); ISCR Case No. 09-07219 (App. Bd. Sep. 27, 2012).

For AG ¶ 20(b) to fully apply, Applicant must show that he acted responsibly under the circumstances. Applicant's spouse stopped working when she was pregnant with their son in 2009, so Applicant became the sole provider for his family. He supported two households from May 2013 until March 2014. There is no evidence that Applicant was paid more than his \$15 hourly wage or that he received temporary duty or hardship pay when he worked as a subcontractor for his current employer. Applicant was made aware during his October 2013 subject interview that the delinquent debt on his credit record was more extensive than he had realized when he completed his e-QIP. However, Applicant could not afford to address his debts, at least not before he was hired by his current employer.

Since Applicant began working directly for his employer in January 2014, he has routinely worked seven days a week. On an hourly wage of \$27.04, he takes home about \$1,700 a week. His reported ongoing monthly expenses of \$4,617 do not include any costs for car maintenance, or clothing, activities, or personal care for himself or his family,⁶ so his expenses are likely somewhat higher than his estimate. In March 2014, Applicant spent between \$1,200 and \$1,300 to move his family. His priority was understandably stabilizing his family's finances and living situation over the last six months, but even so, he has over \$1,000 in reported monthly income for which he cannot account other than to indicate that he had to acquire some furnishings for his residence. To the extent that AG ¶ 20(b) applies, it does not fully mitigate the financial judgment concerns or the financial pressures that arise because of \$20,000 in delinquent debt, which includes over \$12,000 in defaulted federal student loans.

Applicant told the OPM investigator in October 2013 that he had arranged to make payments of \$100 per month toward \$3,169 in aggregate medical debt held by the assignee in SOR 1.g-1.m. He also indicated that he planned to resolve some of his other debts (e.g., SOR 1.u) by the year's end. There is no evidence that he made any of the \$100 payments or that he resolved any other debt issues by the end of 2013. Nonetheless, both AG ¶ 20(c), "the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control," and AG ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," must be considered. After Applicant received the SOR, he began contacting his creditors. He indicated in his Answer to the SOR allegations that he was actively seeking debt consolidation assistance. As of his June 17, 2014 hearing, Applicant had made no payments on the debts, partially because he was not sure about how to resolve them. Two days later, Applicant arranged to start repaying the first of several medical debts. On June 25, 2014, he enrolled in a student loan rehabilitation program.⁷ Applicant

⁶ The \$4,617 figure is based on \$1,800 for rent, \$1,000 for groceries, \$320 for a washer and dryer, \$165 for oil, \$240 for gasoline, \$320 for electricity, \$250 for cell phone service, \$120 for cable service, \$100 for his spouse's student loans, and \$302 for his car loan. (Tr. 45, 52.)

⁷ Department Counsel indicated in his closing argument that while he was being careful not to advise Applicant of a certain course of action about his debts, it was often the case that one can rehabilitate a student loan in six months under a payment agreement. (Tr. 68.) It is unclear whether Applicant considered the option of loan rehabilitation before his hearing. He showed some degree of good faith by acting promptly to address some of the DOD's concerns.

showed a willingness to address the DOD's concerns. Yet it is difficult to fully apply either AG ¶ 20(c) or AG ¶ 20(d) with at most two payments (\$131 on his student loans and \$50 on a \$100 medical debt) on his past-due debts.⁸ The DOHA Appeal Board has indicated that the concept of "good faith" under AG ¶ 20(d) requires that a person act in a way that shows "reasonableness, prudence, honesty, and adherence to duty or obligation." See e.g., ISCR Case No. 02-30304 (App. Bd. Apr. 20, 2004). Applicant's financial difficulties may have initially arose, in whole or in part, due to circumstances outside of his control, but his very belated efforts to address his debts are not enough to fully overcome the financial considerations concerns.

Guideline H, Drug Involvement

The security concern for drug involvement is set out in AG ¶ 24:

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

Under AG ¶ 24(a), drugs are defined as "mood and behavior altering substances," and include:

- (1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens),⁹ and
- (2) inhalants and other similar substances.

Under AG ¶ 24(b), drug abuse is defined as "the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction." Disqualifying condition AG ¶ 25(a), "any drug abuse," applies because Applicant used narcotics, which had not been prescribed for him, from 1999 to 2005 and from June 2009 to September 2009, as alleged in the SOR. Furthermore, he indicated on his e-QIP that his abuse of prescription narcotics obtained from friends continued to approximately June 2011. He told an OPM investigator that he had a prescription for Percocet from September 2009 to June 2011, and he testified at his hearing that he last misused a prescription narcotic "back in probably 2009 to 2010." (Tr. 60.) His narcotic drug abuse may well have been as recent as June 2011, although the evidence is inconclusive. Applicant's use of a narcotic from

⁸ On June 30, 2014, Applicant forwarded a copy of two payment coupons for the first medical debt that he "is paying." The first \$50 payment was due June 27, 2014. (AE C.) He provided no evidence that he had made that payment on time.

⁹Schedules I, II, III, IV, and V, as referred to in the Controlled Substances Act, are contained in 21 U.S.C. § 812(c). The prescription narcotics Vicodin, Percocet, and Lortab are Schedule II drugs. Schedule II drugs are defined as those drugs with a high potential for abuse; have a currently accepted medical use in treatment in the United States (or a currently accepted medical use with severe restrictions); and abuse of the drug may lead to severe psychological or physical dependence.

someone else's prescription is clearly drug abuse, even if it was for pain and not for recreational purposes.

The recurrence of Applicant's drug abuse in 2009, after apparently four years of no abuse, precludes me from applying mitigating condition AG ¶ 26(a):

(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment.

Applicant denies any intent to abuse any prescription drug in the future. Under mitigating condition AG ¶ 26(b), "a demonstrated intent not to abuse any drugs in the future" may be shown by the following:

- (1) disassociation from drug-using associates and contacts;
- (2) changing or avoiding the environment where drugs were used;
- (3) an appropriate period of abstinence;
- (4) a signed statement of intent with automatic revocation of clearance for any violation.

Applicant's candor about his prescription drug abuse on his e-QIP and at his hearing leads me to accept that he intends no future drug abuse. Applicant indicated, with no evidence to the contrary, that he has no current contact information from those friends who provided him some of their prescription narcotics. Applicant is no longer living in the same area of the country where his prescription drug abuse occurred. Applicant cannot be said to have completely avoided the persons who contributed to his prescription drug abuse because he took some of his spouse's narcotics in the past. While there is no evidence that Applicant's spouse is currently taking any prescribed drugs, AG ¶ 26(b)(1) and AG ¶ 26(b)(2) are only partially satisfied.

Applicant last abused a prescription drug in or before June 2011. In deciding whether his present three or four years of no abuse qualifies as an appropriate period of abstinence under AG ¶ 26(b)(3), Applicant relapsed in 2009 after a similar period of abstinence from 2005 to 2009. Yet, the catalyst for his relapse was an injury sustained in a recreational contest and not a desire to get high from the drugs. Applicant exercised poor judgment when he took narcotics without a valid prescription, but to avoid recurrence of such drug abuse, he no longer accepts a prescription for pain medications. AG ¶ 26(b) applies in mitigation of his abuse of prescription narcotics.

Whole-Person Concept

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(a).¹⁰

Applicant's financial delinquencies include about \$3,789 in non-discretionary medical debt, but most of his past-due debt was voluntarily incurred. Of his \$20,000 in delinquent debt, Applicant has paid less than \$200. Unresolved debt is not necessarily a bar to having access to classified information. As noted by the DOHA Appeal Board, a security clearance adjudication is not a proceeding aimed at collecting an applicant's personal debts. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) The purpose is to determine whether an applicant has the judgment, reliability, and trustworthiness for a security clearance consistent with the guidelines in the Directive.

In making the whole-person assessment required under the Directive, an applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve financial problems and take significant actions to implement the plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Applicant's post-hearing repayment arrangements toward resolving his debts with the creditors who hold most of his debt (SOR 1.f-1.m and 1.o-1.q) weigh in his favor, but they are too recent to establish a track record of financially responsible behavior toward his creditors. Concerns persist about his financial judgment, given he was behind on his natural gas bill in May 2014. Applicant and his spouse pay \$250 a month for cell phone service, which is difficult to justify in light of their past-due obligations, including her delinquent student loans. Applicant cannot be said to have a good handle on his household finances where he does not know the balance of his spouse's student loan debt. He candidly admitted that poor budgeting by him and his spouse has contributed to their financial difficulties ("We've been trying to, basically, grow up and budget ourselves, so that (a) I can get taken care of what I need to get taken care of and her do the same."). (Tr. 46.) He has not had any financial counseling, even though he could use some assistance in budgeting for his expenses.

Applicant presented as very candid and sincere about his desire to rectify his financial situation, and to avoid any prescription drug abuse in the future. Even so, 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.). Unmitigated financial

¹⁰ The factors under AG ¶ 2(a) are as follows:

- (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.

considerations concerns lead me to conclude that grant of a security clearance to Applicant is not warranted at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary to justify the award of a security clearance in the future. Should Applicant be afforded an opportunity to reapply for a security clearance, having paid his past-due debts or established compliance with repayment plans, he may well be able to demonstrate persuasive evidence of his security clearance worthiness. Based on the facts before me and the adjudicative guidelines that I am required to consider, I conclude that it is not clearly consistent with the national interest to grant Applicant security clearance eligibility at this time.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	Against Applicant
Subparagraph 1.s:	Against Applicant
Subparagraph 1.t:	Against Applicant
Subparagraph 1.u:	Against Applicant
Subparagraph 1.v:	Against Applicant
Subparagraph 1.w:	Against Applicant
Paragraph 2, Drug Involvement:	FOR APPLICANT
Subparagraph 2.a:	For 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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Elizabeth M. Matchinski
Administrative Judge