



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



In the matter of:)
)
) ISCR Case No. 12-07618
)
Applicant for Security Clearance)

Appearances

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

08/22/2013

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant was denied a security clearance in January 2006, partially because of financial problems. Despite annual household income over \$130,000, Applicant and his spouse subsequently defaulted on their student loans. Judgments were issued against them for medical debts and for delinquent vehicle taxes. Within the last year, Applicant settled some credit card accounts for less than their full balances and satisfied the court judgments. While he is making payments toward his student loans and a credit card debt in collection, his recent financial irresponsibility precludes a favorable decision at this time. Clearance denied.

Statement of the Case

On reconsideration of Applicant’s security clearance eligibility, the Department of Defense (DOD) issued an undated Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F (Financial Considerations), and explaining why it was unable to find it clearly consistent with the national interest to grant security clearance eligibility for him. DOHA took the action under Executive Order 10865, *Safeguarding*

Classified Information within Industry (February 20, 1960), as amended; Department of Defense 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 May 23, 2013, and he requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. On July 12, 2013, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant a security clearance for Applicant. On August 12, 2013, I issued a notice scheduling a hearing for September 4, 2013.

I convened the hearing as scheduled. Ten Government exhibits (GEs 1-10) and eight Applicant exhibits (AEs A-H) were admitted without objection. A chart, referred to by Department Counsel in his closing argument, was marked as a hearing exhibit (HE 1). Applicant testified, as reflected in a transcript (Tr.) received on September 10, 2013.

At Applicant's request, and without objection from the Government, I held the record open for two weeks after the hearing for additional documents from Applicant. On September 17, 2013, Applicant submitted four exhibits (AEs I-L), which were forwarded to Department Counsel for review and comment by September 25, 2013. The Government did not object to their admission, and the documents were admitted into evidence on September 19, 2013. The record closed on that date.

Findings of Fact

The SOR alleges under Guideline F that as of the issuance of the SOR, Applicant owed nine delinquent debts totaling \$49,021 (SOR 1.a-1.i), of which \$34,250 was student loan debt in collection (SOR 1.c). After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 36-year-old senior piping designer. He attended college from September 1995 to June 1999, when he left school six credits short of a bachelor's degree. He has worked for his current employer, a defense contractor, since September 2003. Applicant married his spouse in October 2004. He and his spouse have two daughters, who were born in December 2005 and in June 2009. (GEs 1-3; Tr. 44-45, 49.)

After leaving college, Applicant worked as a substitute teacher in a middle school. He was employed as a technical documentation writer for a lithography company from about October 2000 to September 2003, when he began his current employment. On September 23, 2003, Applicant applied for a Secret clearance. (GE 6.) He disclosed no financial issues out of concern for the possible adverse impact on his security clearance eligibility. (GE 3.) At the time, he owed \$24,735 in student loan debt in collection. A civil judgment of \$520 had been entered against him in March 1999. Active collection debts of \$540 (credit card) and \$243 (cable services) from 2001 had not been paid. A credit card debt of \$447 and a telephone services debt of \$408 had been charged off. Two other delinquent credit card accounts had been sold. (GE 10.)

On February 4, 2004, Applicant provided a sworn statement to a special agent from the Defense Investigative Service. He indicated that he and his fiancée (now spouse) owed about \$68,000 in debt, of which about \$25,000 was his debt. Applicant admitted that he had defaulted on his student loans because other expenses took priority. Over the next three months, he planned to obtain his credit report and either contact his creditors or arrange for debt consolidation. Applicant executed a Personal Financial Statement showing that his and his fiancée's monthly expenses and debt payments (including \$200 per month toward his then fiancée's \$15,000 in student loan balances) exceeded their monthly income by \$729 with no provision for payments on his student loans and four other delinquent accounts. Applicant acknowledged that to repay his debts, he would have to curtail his miscellaneous expenses estimated at \$1,300 per month. (GE 7.)

On October 19, 2004, the DOD issued an SOR to Applicant, alleging Guideline F concerns because of his student loan default, past-due credit card debt totaling \$987, telephone and cable delinquencies totaling \$651, and his negative monthly household balance. Guideline E concerns were alleged because of his failure to disclose any debts on his security clearance application. In December 2004, Applicant satisfied the cable television debt. Between March 2005 and May 2005, Applicant made \$275 monthly payments on his student loans. However, because of additional expenses, including a mortgage payment for their home purchased in early March 2005 (Tr. 45.), Applicant had not satisfied his credit card delinquencies by an August 2005 hearing convened by me concerning his security clearance eligibility. On January 30, 2006, I issued a decision denying Applicant security clearance eligibility because he had not paid the past-due credit card debt and had made only a few payments toward rehabilitating his student loans. He had also deliberately concealed his delinquencies when he applied for his security clearance. (GE 5.) The decision denying him clearance eligibility was upheld on appeal on April 4, 2006. (GE 4.)

Applicant remained on the job as a productive employee working on non-classified projects. (AEs A, K, L.) In February 2012, Applicant began an extended work assignment off-site. His skills and expertise in the area of piping systems arrangement and design led the program supervisor to endorse Applicant as a preferred candidate for a supervisory position. (GE 2; AE A.)

Needing a security clearance to progress at work (GE 3; Tr. 66.), Applicant asked DOHA to reconsider him for security eligibility on August 20, 2012. He requested an opportunity to show that he had resolved "an abundance [of] debts" since 2008 and was making a good-faith effort to negotiate a settlement of his remaining accounts. Applicant submitted a credit report of April 24, 2012, showing that he and his spouse were making timely monthly payments of \$633 on a second mortgage loan balance of \$64,014, although their loan had been 30 days late 11 times between September 2010 and February 2012. They reportedly had only one more payment of \$265 to make on a three-year vehicle lease taken out in April 2009 (SOR 1.g). In April 2011, they financed a new car through a loan of \$23,946. They had been 30 days late twice in 2011 in making their \$506 monthly payment, but they had brought their loan current.¹ Applicant was an authorized user on two credit

¹ Applicant testified that he has had a lot of repairs on the vehicle, although he provided no estimate of the

card accounts with a bank, which were settled for less than their full balances in July 2009 when they had become 90 days and 120 days past due. A credit card account with a home improvement retailer, on which he was also an authorized user, was paid for less than its full \$6,039 balance after it had been charged off. Applicant had two closed accounts with past-due balances of \$593 (SOR 1.e) and \$779 (SOR 1.d). The consolidated balance of Applicant's delinquent student loans was \$27,510 and over 180 days past due (SOR 1.c). He was supposed to pay \$154 per month for six years but had made no payments after January 22, 2010. (GE 2.) A medical debt of \$100 from April 2010 was in collection. A cable television debt of \$349 from November 2011 was in collection as of January 2012 (SOR 1.h). Applicant also owed a collection debt of \$500 from 2009 to a rental car company (SOR 1.i). (GE 2.)

On October 10, 2012, Applicant executed an Electronic Questionnaire for Investigations Processing (e-QIP). Applicant disclosed the denial of his security clearance eligibility by DOHA in January 2006, and he listed several delinquencies: a \$100 medical debt (SOR 1.b), which he claimed was pending resolution with his insurance company; a disputed \$593 consumer credit debt in collection (SOR 1.e); a \$500 rental car debt (SOR 1.i); and \$1,476 in student loan debt (SOR 1.c), which he reportedly was in the process of deferring. (GE 1.)

Applicant's credit report of October 30, 2012, showed that in addition to the previously disclosed \$100 medical debt, \$500 rental car debt, and \$593 consumer credit debt, he owed a medical judgment of \$1,184 filed in March 2012 (SOR 1.a), a \$779 wireless phone debt (SOR 1.d), and a \$349 cable television debt (SOR 1.h). Applicant's student loans (SOR 1.c) were \$2,414 past due. Applicant and his spouse were 30 days late in paying their second mortgage as of October 2012. They had two car loans that were current. In addition to the \$23,946 loan for her car from 2011, Applicant and his spouse had taken out a \$22,783 car loan for his vehicle in July 2012. (GE 9.)

As of January 2013, Applicant's spouse was in default of her student loan debt totaling \$43,996.66. She entered into a loan rehabilitation program in mid-January 2013 under which she agreed to pay \$337 per month for nine consecutive months to remove her federal student loans from default. As of August 12, 2013, her student loan balance was about \$42,833. (AE H.)

On January 13, 2013, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM) about his debts and the reasons that led to him being denied a security clearance in 2006. He expressed regret for his lack of candor during his previous investigation, which he did not intend to repeat. As for the debts on his credit record, Applicant indicated that after he had completed his latest e-QIP, a hospital obtained a small claims judgment of \$1,184 against him in July 2012 that he was repaying at \$35 per month. Applicant believed it should have been covered by his medical insurer, so he did not pay it. Applicant disputed the \$593 consumer credit debt, which he thought

expense or documentation of the repairs. (Tr. 70.)

he had paid as a precondition for his mortgage.² He expressed his intent to pay it if required for his security clearance. Applicant was also disputing the \$500 rental car bill, contending that it should have been covered by his auto insurer. As for the discrepancy in his student loan balance, Applicant explained that he listed on his e-QIP the annual payment required on his student loans rather than the \$28,617 balance. He acknowledged he had made no payments on his delinquent student loans, but he was in the process of establishing a repayment plan with a starting date in February 2013 to remove his loans from default status. Applicant thought he had paid off his wireless phone account when he switched providers, and he planned to contact the creditor by late February 2013 to determine whether the \$779 balance was valid. When asked about a \$6,661 past-due debt on his credit record, Applicant explained that he had exceeded the mileage on a lease but he would not pay the debt until he received a report setting out the fees. Applicant did not recognize the \$349 cable debt on his credit record, although he did not deny he had an account with the creditor before October 2011. Applicant claimed to not know that he was behind on his second mortgage because his payments were being made automatically. Applicant admitted that he had settled some consumer credit accounts for less than their full balances, including a \$9,790 auto loan debt. He attributed his financial problems to overreliance on consumer credit cards; the purchase of his home; the costs of raising two children, both of whom had medical issues when they were younger; and the loss of his spouse's income around 2009. She collected worker's compensation for seven months after an injury. He reported that he was paying his current debts on time, including two car payments, child care expenses, and commuting costs. Applicant expressed his intent to repay his debts. (GE 3.)

As of April 2013, the \$100 medical debt, \$779 wireless phone debt, and \$593 consumer credit debt were still in collection (SOR 1.b, 1.d, and 1.e). Applicant's student loan balance had accrued to \$34,250 (SOR 1.c) and was in collection. A new credit card account opened in January 2012 had been closed by the grantor and was in collection with a balance of \$4,605 as of December 2012 (SOR 1.f). His second mortgage was current, although it had been 60 days behind the previous month. Applicant reportedly owed a \$6,661 charged-off balance on the auto lease (SOR 1.g). (GE 8.)

Around late April 2013, DOHA issued an SOR to Applicant because of nine unpaid delinquent debts. (Tr. 8.) As of his May 23, 2013, response to the allegations, Applicant had satisfied only the \$1,184 judgment. (AE B.) Over the next few months, Applicant reached repayment arrangements with his remaining creditors, as set forth in the following table.

Debt in SOR	Delinquency history	Payment arrangements and status as of September 2013
1.a. \$1,184 hospital judgment	\$1,184 hospital debt from 2008; insurance denied coverage; judgment filed	Paid \$35 weekly Jul. 2012-Dec. 2012 and Mar. 2013-Apr. 2013 to satisfy

² Applicant indicated that the debt was for a credit card not used after 2005. (GE 3.) Available credit reports show that the debt was an installment sales contract opened in February 2006. They do not confirm that the original creditor was the company identified by Applicant.

	Mar. 2012. (GEs 3, 8, 9.)	judgment. (GE 3; AE B; Tr. 49-50.)
1.b. \$100 hospital debt in collection	\$100 hospital debt from Nov. 2009, for collection Apr. 2010. (GEs 1, 3, 8, 9.)	Debt consolidated with larger debt in SOR 1.a (Tr. 29-30, 50.); satisfied. (AE B.)
1.c. \$34,250 student loan debt in collection	Four student loans totaling \$20,000 no longer deferred Dec. 2001; \$24,735 collection balance Sep. 2003 (GE 10.); Jan. 2006, agreed to pay \$154 per month for 360 months; some payments between Mar. 2005 and Jan. 2010 (GEs 2, 4.); \$26,513 in collection Mar. 2012 (GE 2.); past-due balance \$34,250 Mar. 2013. (GE 8.)	Late May 2013, agent collecting student loan agreed to accept \$252 monthly payments for nine consecutive months to rehabilitate loan; paid \$252 Jun. 16, 2013 then \$126 biweekly Jul. 7, 2013 through at least Aug. 18, 2013. (AE C.)
1.d. \$779 wireless telephone debt in collection	Wireless phone account opened Jan. 2008; last activity Apr. 2008; \$779 for collection. (GEs 2, 8, 9.)	Believes he paid it in the summer of 2013 but no proof. (Tr. 34, 51.)
1.e. \$593 consumer credit debt in collection	Installment sales contract opened Feb. 2006; \$531 past-due balance sold; \$558 in collection Mar. 2010; \$593 balance Mar. 2013 (GEs 2, 8, 9.); \$651.70 judgment Apr. 25, 2013. (AE D.)	Post-dated payment Jun. 2013; judgment satisfied as of Jul. 10, 2013. (AE D.)
1.f. \$4,605 credit card debt in collection	Opened Jan. 2012; high credit \$4,721; last activity Mar. 2012; \$4,605 in collection Dec. 2012. (GE 8.)	Around June 2013, arranged to repay debt in \$40 increments; collection balance \$4,285.19 as of Aug. 13, 2013. (AE E.)
1.g. \$6,661 charged-off auto debt	Joint auto lease taken out Apr. 2009; \$9,562 high credit; \$265 payments per month; turned in vehicle Aug. 2012 (Tr. 56.); 60 days past due as of Sep. 2012; \$6,661 balance charged off as of Dec. 2012. (GEs 8, 9.)	Disputed debt as of Jan. 2013 (GE 3.); does not plan on making payments until he receives lease report showing balance. (Tr. 41-42, 56.)

1.h. \$349 cable television debt in collection	\$349 cable debt for collection Nov. 2011; unpaid as of Dec. 2012. (GE 9.)	Spouse informed him it has been paid; no proof of payment presented. (Tr. 42.)
1.i. \$500 rental car debt in collection	\$500 debt from accident; in collection since Jul. 2009; unpaid. (GEs 2, 9; Tr. 64-65.)	As of Jan. 2013, creditor billed him \$500; disputes debt but will pay it if required for his clearance. (GE 3; Tr. 42, 65-66.)

As of July 2013, Applicant had a judgment action for \$500 pending against him by a children’s medical center. On July 29, 2013, Applicant’s spouse authorized two payments of \$250 toward the debt, and the creditor withdrew its court action in August 2013. (AE F; Tr. 38-39.) As of July 1, 2013, Applicant and his spouse owed delinquent personal property taxes on their vehicles for 2010 through 2012 totaling \$1,898.77. On July 29, 2013, they satisfied a judgment against them for the unpaid taxes. (AE G; Tr. 69.)

In August 2013, Applicant and his spouse took a one-week vacation to Bermuda, which cost them about \$2,400. (Tr. 62.) Their income tax refund for 2012 was around \$2,000. Applicant is not clear what they did with the funds (“I don’t exactly remember how I used each penny of it. We use every single dime we have.”). (Tr. 59.)

Applicant earns between \$60,000 and \$75,000 annually. His spouse is a teacher, who earns an annual salary around \$79,000. (Tr. 58-59.) They took her lump-sum payout that she receives every year and put it toward their debts instead of summer activities for their children or refurbishing their home. (Tr. 67.) Under their household budget, Applicant and his spouse have net monthly income of \$169, provided they make no contributions to retirement or college savings. Applicant and his spouse’s monthly mortgage payments total about \$2,000 (\$1,375 on the first mortgage and \$625 on the second mortgage). (AE J; Tr. 73.) Their car payments for two vehicles total \$983 because of the high interest rate on their loans.³ Applicant and his spouse trade in their vehicles every three or four years, when the mileage reaches 100,000. (Tr. 69-70.) Both he and his spouse have lengthy commutes to work. He drives 120 miles a day while she drives over 100 miles a day. (Tr. 60.) Daycare and before and after school care expenses total \$1,080 per month. As of September 2013, Applicant’s spouse was committed to paying \$50 per month toward her student loans. Applicant has budgeted for \$600 per month toward debt payments (including his student loans), \$100 per month for his children’s extracurricular activities, and \$300 a month for discretionary expenses. (AE J.) Applicant and his spouse had an estimated \$1,000 in checking account deposits as of September 2013. (Tr. 59.)

Applicant has held several different leadership roles during his ten years with the defense contractor. His current duties include oversight of the training requirements for his 361 co-workers. Managers in the piping department attest to Applicant’s willingness to

³ Applicant’s spouse drives a 2011 model-year vehicle while he drives a 2012 model-year sedan. The interest rate on his vehicle loan is 15.5% because of his poor credit. Applicant testified, “I need a brand new car, because we both put about 100,000 miles in three years, as we roll cars over.” (Tr. 68.)

volunteer for challenging tasks. He has demonstrated effective, trustworthy, and efficient leadership. (AEs A, K.)

Applicant is involved in his local community as one of the directors of a youth soccer club. He has taken on an active role in its recreation program and implemented new initiatives to increase its membership base. The current treasurer of the soccer club attests to the seriousness with which Applicant has taken his fiduciary obligations to the club. (AE L.)

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 concerns about financial considerations are set out 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.

Applicant defaulted on his student loans for the first time around 2001. At his previous security clearance hearing in August 2005, he presented evidence showing some payments in 2005 as a precondition of his acceptance into a student loan rehabilitation program. By August 2012, his student loans (SOR 1.c) were again in default. In addition, he owed delinquent debts of almost \$1,200 to a local hospital for services incurred in 2008 and 2009 (SOR 1.a and 1.b); of \$349 to a cable company (SOR 1.h); of \$779 to a wireless phone provider (SOR 1.d); and of \$558 on a consumer credit account (SOR 1.e). His April 2013 credit report shows that he opened a credit card account in January 2012 on which he incurred \$4,721 in charges by March 2012. By December 2012, his account had been closed by the creditor due to nonpayment of a \$4,605 balance (SOR 1.f). Around August 2012, Applicant turned in a leased vehicle with excess mileage. The creditor is demanding a \$6,661 debt balance (SOR 1.g) that Applicant is unwilling to pay without documentation of the fees. Applicant is also being held liable for \$500 in costs for a rental car damaged in an accident more than four years ago (SOR 1.i). Applicant disputes his insurer’s denials of coverage. Disqualifying conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” are established because of his record of financial delinquency.

Mitigating condition AG ¶ 20(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,” does not apply because his financial problems are recent and some debts have not been paid. Applicant satisfied the hospital judgment (SOR 1.a and 1.b) around April 2013. Even so, despite household income around \$130,000 annually, Applicant and his spouse incurred new judgment debt in 2013 for unpaid personal property (vehicle) taxes of \$1,898.77 for 2010 through 2012. A children’s medical center filed for a judgment against Applicant which was withdrawn in August 2013 after Applicant’s spouse made payments. Although the tax and medical judgments cannot provide separate bases for security disqualification under Guideline F because they were not alleged under that guideline, they may

appropriately be considered for other purposes including whether Applicant's financial problems are recent or ongoing.⁴

Applicant attributes his failure to address his debts for several years to circumstances of everyday life, including the costs of raising two children who were ill when they were younger; hurricanes ("things happened with the house"); his and his spouse's budget; and the failure of his spouse's income to keep pace with her insurance costs. (Tr. 61.) Medical expenses for his children (SOR 1.a and 1.b as well as the latest children's medical center debt) are circumstances contemplated within mitigating condition AG ¶ 20(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." Damage to his home caused by weather could also fall within AG ¶ 20(b), although Applicant did not present proof of these costs or of damages. Even assuming unexpected, nondiscretionary costs, it is difficult to find that Applicant has acted responsibly toward some of his creditors. He paid the medical debts in SOR 1.a and 1.b, and the consumer credit debt in SOR 1.e only after judgments were issued against him. His credit card delinquency in SOR 1.f is recent. After Applicant reapplied for a security clearance, he and his spouse inexplicably gave priority to resolving her delinquent accounts (e.g., her student loans around \$43,919 and some credit card debts) over his debts and their delinquent vehicle taxes for 2010 through 2012. Applicant testified that his spouse's lump-sum payout in 2013 went to their debts rather than to the usual summer activities for their children or refurbishing their home. (Tr. 67.) Yet, the evidence also shows that Applicant spent \$2,400 for a vacation in August 2013 when he had yet to make any payments toward the \$6,661 debt for the leased vehicle (SOR 1.g).

Applicant provided proof that as of September 2013, he had resolved or was making payments on the debts in SOR 1.a, 1.b., 1.c, 1.e, and 1.f. Mitigating conditions 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," apply in part, although payments made in response to court action (SOR 1.a, 1.b, 1.e, the \$500 children's medical center and \$1,898.77 vehicle tax debts) or after collection (SOR 1.c and 1.f) do not carry the same weight in mitigation had Applicant made payments before his accounts became seriously delinquent. He testified that he paid off the wireless phone debt in SOR 1.d within the last two months and that his spouse told him that the cable debt in SOR 1.h had also been paid. Post-hearing submissions from Applicant did not include evidence of debt satisfaction for either debt. Moreover, neither AG ¶ 20(c) nor AG ¶ 20(d) applies to the leased car debt in SOR 1.g or the rental car debt in

⁴ 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 Directive Section 6.3. See, e.g., ISCR Case No. 02-07218 (App. Bd. Mar. 15, 2004); ISCR Case No. 03-20327 (App. Bd. Oct. 26, 2006); ISCR Case No. 09-07219 (App. Bd. Sep. 27, 2012). I have considered these debts only for these purposes.

SOR 1.i. Applicant has no repayment plans in place for either debt. He claims that he would gladly pay the debt in SOR 1.g. While his demand for an accounting of fees is reasonable, Applicant presented no documentation of his contacts with this creditor. As of April 2013, the creditor was reporting a \$6,661 past-due balance on his account. Applicant is still disputing his payment liability for the rental car debt (SOR 1.i). The accident occurred more than four years ago. Without some evidence showing that Applicant is likely to prevail on his dispute, 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 also not established.

His effort to address delinquencies in the past year is a significant step in the right direction, but the recency of his financial problems continues to raise concerns about his judgment and reliability. In addition to the lingering security concerns raised by the unaddressed vehicle debts in SOR 1.g and 1.i, he was behind on his second mortgage and car loans in January 2013, at a time when he was making few payments on his other debts and his annual household income exceeded \$130,000. The financial concerns are not fully mitigated.

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).⁵

When Applicant’s security clearance was denied in January 2006, he was put on notice that his financial problems and lack of candor about his delinquencies were of considerable concern to the DOD. Applicant is credited with being largely forthright about his debts during his latest background investigation, but it does not mitigate his record of recent financial irresponsibility.

The DOHA Appeal Board addressed a key element in the whole-person analysis in financial cases stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of “‘meaningful track record’ necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not

⁵The 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.

required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrates that he has ‘ . . . established a plan to resolve his financial problems and taken significant actions to implement that plan.’ The Judge can reasonably consider the entirety of an applicant’s financial situation and his actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (‘Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.’) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted). The DOHA Appeal Board recently reaffirmed that in a Guideline F case an applicant must act responsibly under the circumstances and develop a reasonable plan for repayment, accompanied by conduct which evidences a serious effort to effectuate the plan. See ISCR 11-08087 (App. Bd. Mar. 5, 2013). After he was denied career advancement at work because of no clearance, Applicant began to take credible steps to rectify his poor credit. He satisfied the medical judgment in the SOR and a tax judgment that was not alleged. In July 2013, he satisfied the consumer credit debt in SOR 1.c brought to judgment. Applicant has repayment plans in place to address his student loan debt and also the credit card debt in SOR 1.f, which together constitute more than 80% of his remaining delinquencies. As of August 2013, Applicant had made three months of payments on the two debts.

At the hearing, the Government expressed lingering concern over Applicant’s ability to handle his finances going forward because he did not maintain his student loan payments after his 2005 hearing; he disregarded most of his debts before the SOR was issued; and he took a foreign vacation at a cost of \$2,400 when some debts are still not addressed. Applicant testified that he and his spouse “use every single dime [they] have.” (Tr. 59.) Post-hearing, Applicant submitted a budget showing they can afford to make the debt payments already promised to their creditors with \$169 in excess monthly income after expenses, although with no savings toward retirement or college funds for their daughters. Under this budget, Applicant has available \$600 per month for his debts, including his \$34,277 in student loans, and \$50 per month for his spouse’s \$42,833 in student loan debt. He believes he paid the \$1,128 in cable and utility debt in collection, but he provided no proof of debt satisfaction. There are no payment plans in place for the vehicle debts in SOR 1.g and 1.i.

Security clearance decisions are not intended as punishment for past wrongdoing or irresponsibility. Applicant had some unplanned expenses that were nondiscretionary, such as the medical costs for his daughters. Student loans are a justifiable expense and constitute the majority of his remaining delinquent debt balances. Even so, it is particularly troubling that his creditors had to aggressively pursue him in court or through collection.

Knowing that his advancement at work was hindered because of a lack of security clearance, he still chose to spend \$2,400 for a foreign vacation with his spouse in August 2013. Applicant has a well-documented record of leadership and valuable contributions to his defense contractor employer that weighs in his favor. However, 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.). Based on the facts before me and the adjudicative guidelines that I am required to consider, I am unable to conclude that it is clearly consistent with the national interest to grant Applicant a security clearance at this time.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST THE APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Elizabeth M. Matchinski
Administrative Judge