



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



In the matter of: )  
 )  
 REDACTED ) ISCR Case No. 12-11371  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Stephanie C. Hess, Esq., Department Counsel  
For Applicant: *Pro se*

04/19/2016

**Decision**

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant has struggled financially to remain current on his debts, largely because of a high mortgage, some student loan payments for his children, and a decline in his household income. He has satisfied some smaller debts, and is only 15 days late in paying his mortgage. However, he has yet to demonstrate financial stability. Clearance is denied.

**Statement of the Case**

On February 11, 2015, 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 explaining why it was unable to find it clearly consistent with the national interest to grant or continue his security clearance eligibility. 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.

On April 1, 2015, Applicant answered the SOR allegations, and he requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On October 9, 2015, 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 October 26, 2015, I scheduled the hearing for November 17, 2015.

At the hearing, three Government exhibits (GEs 1-3) and 18 Applicant exhibits (AEs A-R) were admitted into evidence without objection. The letter forwarding discovery from Department Counsel to Applicant was incorporated in the record as a hearing exhibit (HE 1) but not admitted as an evidentiary exhibit. Applicant testified, as reflected in a transcript (Tr.) received on November 24, 2015.

### **Summary of SOR Allegations**

The SOR alleges that Applicant owed delinquent debt totaling \$46,790 on 11 accounts (SOR ¶¶ 1.a-1.k) as of February 11, 2015. When he answered the SOR, Applicant indicated that SOR ¶¶ 1.c and 1.j were the same debt. Likewise, the debt in SOR ¶ 1.h was duplicated in SOR ¶ 1.k. He provided a detailed chart showing the status of his debts. Applicant indicated that that his mortgage (SOR ¶ 1.a) was current, the debts in SOR ¶¶ 1.e, 1.f, and 1.i had been paid, and he was making payments on the debts in SOR ¶ 1.c (duplicated in SOR ¶ 1.j) and SOR ¶ 1.h (duplicated in SOR ¶ 1.k). Applicant attributed his financial issues to having two children in college in the past five years and to a reduction in his hours and commission at his part-time jobs.

### **Findings of Fact**

After considering the pleadings, exhibits, and transcript, I find that the debt in SOR ¶ 1.c is the same debt as SOR ¶ 1.j and the debt in SOR ¶ 1.h is the same debt as SOR ¶ 1.k. Additional findings of fact are as follows:

Applicant is a 57-year-old engineer with a certificate for some technical training completed in June 1984. He attended college from September 1996 to May 1999 while working full time, but has yet to earn his bachelor's degree. Applicant has worked for his current employer, a federally-funded laboratory since May 1988. He has held part-time jobs to supplement the household income since May 2007.

Applicant and his spouse have been married since November 1978. They have a 26-year-old daughter and a 25-year-old son. Applicant and his spouse, a hairdresser (Tr. 58), bought their home for \$300,000 in June 2000. (GE 1; Tr. 65, 74.) His income was progressively increasing at work, and they believed they could afford the mortgage payments. In September 2001, they obtained a \$348,500 mortgage that was paid off through a new mortgage of \$407,340 in October 2002. They paid their mortgage on time. In July 2004, they took on a home equity loan of \$36,000 with a credit union. In June 2005, they paid off their old \$407,340 mortgage through a refinancing of their home loan. They obtained a mortgage loan with the credit union for \$420,000 at 7% interest in June 2005

(SOR ¶ 1.a). (GE 3; Tr. 65.) Applicant's and his spouse's joint income totaled \$127,381 in 2005 and \$129,488 in 2006. (AE J.)

In May 2007, Applicant took on a part-time job as a cable box technician for extra income. (GE 1.) It raised his and his spouse's household income to \$135,428 in 2007. (AE J.) In September 2008, Applicant began working a second part-time job as an assembler for a local company on the weekends, and he co-signed on a \$41,223 student loan to cover his daughter's college costs. (GEs 1, 3.) With Applicant working his full-time job with a defense contractor and two part-time jobs, his and his spouse's joint income increased to \$150,865 in 2008. (AE J.)

In 2009, Applicant and his spouse suffered a \$5,175 loss in joint income from the previous year, largely because of a decline in her income. Around December 2009, Applicant began to suffer from a medical condition that made it difficult for him to work so many hours. (AE N.) His son started college around that time. (Tr. 53.) Applicant's household income declined from \$102,262 in 2010 to \$97,078 in 2011. (AE J.) In December 2011, Applicant stopped working his part-job as an assembler because of a lack of work (GE 1), although it made little difference in the household income in 2012. (AE J.)

By 2012, Applicant was seriously delinquent on some of his accounts. On June 29, 2012, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86) for a secret clearance. (AE A.) He disclosed several financial delinquencies, which he attributed to loss of hours in his part-time job. He listed a \$1,187 financial judgment (SOR ¶ 1.i) that he repaid at \$130 and then \$50 a month. Applicant indicated that he had been delinquent on a credit-card account (SOR ¶¶ 1.c and 1.j), and \$12,289 delinquent on a credit line (SOR ¶¶ 1.h and 1.k), but that both debts should be paid off, the latter by wage garnishment. He listed an outstanding credit-card delinquency of \$464 (not alleged) and an \$11,519 charged-off credit card account (SOR ¶ 1.b). (GE 1.)

Available financial information gleaned from credit checks of July 2012 (GE 3) and November 2014 (GE 2) and debt-payment records shows that Applicant fell seriously behind on several accounts, but also that he has made some progress toward addressing past-due debt balances. Applicant had some help in this regard from a co-worker, who provided financial advice. (Tr. 67-68.) Applicant's record of delinquency and debt payment follows.

#### Mortgage delinquency \$3,353 (SOR ¶ 1.a)

As of July 2012, Applicant's and his spouse's mortgage was \$3,396 past due on a \$384,486 balance. (GE 3.) On February 28, 2014, a collections representative for Applicant's mortgage lender met with Applicant to discuss his and his spouse's delinquent loan payments, which were consistently 85 to 90 days past due. Applicant presented a plan to bring his payments current within a year. With the assistance of the lender, Applicant created a special savings account into which he has deposited funds since March 2014 that are applied to his monthly mortgage payment as sufficient funds are available. (AEs D, R; Tr. 50-51.) Applicant paid \$201 into the account each week. (Tr. 69.)

As of November 2014, the mortgage loan was \$3,353 (one payment) past due on a balance of \$367,767. In February 2015, their monthly mortgage payment increased to \$3,410. However, the mortgage automatically refinanced after 10 years, and because of a lower interest rate on the loan, their monthly payment declined to \$2,616 in August 2015. (AE R; Tr. 61.) As of November 2015, they were less than 15 days late in their mortgage payments and no longer incurring late fees on the loan. (AE R; Tr. 60.) The balance of their mortgage loan was \$356,687 with a next payment of \$2,616 due on December 1, 2015. (AE D.)

Credit card charged-off balance \$11,519 (SOR ¶ 1.b)

A credit card account was opened in November 2006 with Applicant as an authorized user. He and his spouse used the card for home or car repairs. (Tr. 63.) Due to nonpayment since February 2010, the account was charged off in 2012 for \$11,519 and placed for collection. (GEs 1, 3.) As of April 2015, Applicant had made no payments toward the past-due balance. (Answer.) Contact with the creditor revealed that the debt had been sold. As of November 2015, Applicant had not been able to determine who was currently holding the debt. (AE Q; Tr. 57, 62.)

Revolving charge in collection \$940 (SOR ¶¶ 1.c and 1.j, same debt)

Applicant opened a revolving charge account for furniture in December 2005. He made no payments on the account after October 2008. A \$1,489.89 delinquent balance was charged off in March 2009. (GEs 1-3; AE P.) On May 22, 2013, a \$1,539.89 judgment was entered against Applicant. His first payment of \$50 on May 24, 2013, was by insufficient funds check. On July 16, 2013, he paid \$100 by money order, but his next two payments of \$50 each were returned for insufficient funds. He paid \$100 in September 2013 and \$50 in October 2013 by money order and \$150 by personal check in December 2013. In 2014, he paid \$50 by money order in February 2014, \$100 by personal check in July 2014 and \$50 by check in August 2014, but a \$50 payment was returned for lack of funds. Applicant then made no payments toward the debt until March 2015, when he paid \$50 by money order. Over the next five months, he made payments totaling \$300 to reduce the balance of the judgment debt to \$812.24 as of late August 2015. (AE E.) Applicant made only sporadic payments before March 2015 because he was focused on catching up on his mortgage. (Tr. 52.)

Collection debt \$347 (SOR ¶ 1.d)

In February 2011, a \$347 past-due debt was placed for collection by a telephone company. As of September 2014, the debt was still outstanding. (GEs 2, 3.) On April 3, 2015, the collection agency notified Applicant that it was no longer pursuing collection because it closed the account; that Applicant had no further financial obligation regarding the account; and that the collection agency had instructed the three major credit reporting agencies to delete the account from his credit file. However, it would not preclude the original creditor from reporting the account. (AE F.)

Insufficient funds check \$275 (SOR ¶ 1.e)

Around January 2009, Applicant or his spouse paid \$20.69 to a local pharmacy by check drawn on their joint account.<sup>1</sup> The check was returned for insufficient funds, and interest and fees continued to accrue on the unpaid balance to where they owed \$275 as of July 2012. (GEs 2, 3.) On March 6, 2015, the collection agent agreed to settle for \$185.69 paid by March 31, 2015, either by credit or debit card or by MoneyGram. On March 30, 2015, Applicant paid the settlement amount by credit card. (AE G.)

Credit card charge-off \$230 (SOR ¶ 1.f)

Applicant opened a credit-card account in January 2012. As of June 2012, the account was current with a balance of \$201. (GE 3.) Applicant made no payments after October 2013, however, and the creditor charged off a \$230 balance. (GE 2; AE P.) On April 1, 2015, the creditor informed Applicant that he owed a zero balance because his account had been charged off. (AEs H, P.) According to Applicant, he paid the debt in full as of April 2015, but he cannot find a receipt for payment. (AE Q; Tr. 55.)

Medical debt in collection \$195 (SOR ¶ 1.g)

A \$195 medical debt was placed for collection in November 2008. (GE 3.) The debt was still being reported as an unidentified medical debt on Applicant's credit record as of November 2014. (GE 2.) Applicant was unsuccessful in identifying the creditor as of November 2015. (AE Q; Tr. 55.)

Financial judgment \$15,054 (SOR ¶¶ 1.h and 1.k, same debt)

Applicant opened a credit line in December 2005. High credit on the account reached \$10,797. The original lender (SOR ¶ 1.k) charged off his account. In July 2010, the creditor in SOR ¶ 1.h filed for a judgment to recover an unpaid balance of \$15,254. Applicant's employer received a summons about the judgment action in August 2010. A handwritten entry on the court record indicates that wage garnishment was not to exceed \$50 a month. (AE I; Tr. 53.) Applicant had two children in college at the time. (Tr. 53.) In January 2011, the court issued a judgment of \$15,054 against Applicant. (GE 3; Tr. 53.) As of November 2014, the judgment was still outstanding. (GE 2.) Applicant asserts that his wages have been garnished for over four years to repay the debt to reduce the balance to \$12,201.<sup>2</sup> (AE Q; Tr. 53.) Applicant presented his wage statement from his full-time employer for the week ending February 20, 2015, showing that \$12.50 was garnished from his pay for that week. (AE I.)

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<sup>1</sup> The SOR alleges that Applicant issued a bad check of \$275. Available credit reports indicate that the high credit on the account was only \$20. (GEs 2, 3.) When Applicant answered the SOR and at his hearing (AE Q), he indicated that the check was drafted for \$20.69, so apparently most of the balance is fees and interest on the unpaid debt.

<sup>2</sup> Applicant claimed a balance of \$12,201 as of November 2015. (AE Q.) The original lender (SOR ¶ 1.k) reported a balance of \$12,201 as of July 2012. (GE 3.)

Credit card judgment \$1,187 (SOR ¶ 1.i)

Applicant opened a credit-card account with the creditor in May 1988. His account became seriously delinquent in 2009, and a \$500 delinquent balance was placed for collection. In May 2012, the creditor obtained a \$1,187 judgment against Applicant. As of July 2012, the unpaid balance was \$957. (GEs 2, 3.) Applicant had settled the debt for less than its full balance by January 2013. (AE P; Tr. 54-55.)

Student loan charge-off \$49,718 (not alleged)

In September 2008, Applicant opened a joint student loan for \$41,223. As of July 2012, the loan was in deferment. (GE 2.) There is no evidence that Applicant or the joint borrower made any payments before the loan was charged off for \$49,718 around August 2014, despite Applicant and his spouse's joint earnings of \$142,117 in 2013 and \$141,885 in 2014. (AE J.) As of September 2014, the lender was reporting a zero balance on the account after it was charged off (GE 2), which may explain why it was not alleged. Applicant testified that he co-signed on some loans for his children. Midway through her studies for her bachelor's degree, his daughter was placed on academic suspension for six months. Applicant indicated that either he or his daughter have been trying to pay \$74 a month on a \$10,000 to \$12,000 loan that was no longer deferred because of her academic suspension. (Tr. 65.) It is unclear whether this is an additional loan from the loan that was charged off in August 2014. Applicant testified that he co-signed on some \$60,000 to \$80,000 in student loans. (Tr. 81.)

A check of Applicant's credit in November 2014 revealed that Applicant was making timely payments on two auto loans and his home equity loan. He had obtained an \$18,050 automobile loan in April 2013 on which he was making payments of \$344 per month to bring its present balance to \$15,106.<sup>3</sup> He had obtained a \$27,062 automobile loan in April 2014 that he was repaying at \$487 per month to reduce its balance to \$25,919. He was paying \$298 per month on his home equity loan, which had a \$14,535 balance. (GE 2.) He is on a payment plan to address a past-due electric utility debt of \$1,000. (Tr. 78.)

Applicant owes approximately \$12,000 in federal income taxes for tax years 2012 through 2014. He had a dispute with the Internal Revenue Service over mileage claimed for all three years based on his part-time job as a cable technician. The matter was settled out of court around September 2015. Applicant has been billed \$9,600 for 2013 and 2014 and \$2,900 for 2012 because he did not have the funds to pay the taxes when he filed his returns. As of November 2015, Applicant did not have a repayment plan in place for any of his tax liabilities. (Tr. 82-87.) He speculated that he could pay \$200 to \$300 a month toward his taxes, but he has yet to have the discussion with his spouse about putting the money saved from the lower mortgage payment toward their taxes. (Tr. 87-88.)

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<sup>3</sup> Applicant testified that his daughter drives a 2010-model year vehicle and that he had been making a portion of her car payment to help her. (Tr. 81.) It is unclear whether this loan was obtained for a car for his daughter or for his spouse. His spouse traded in her old car for a new vehicle. (Tr. 79.)

Applicant intends to continue to make payments toward his debts. He chose to not file for bankruptcy because he understands he is responsible for his debts. (Tr. 49.) He drives a 1999 model-year vehicle. (AE O; Tr. 35, 63.) He has continued to work on weekends. (Tr. 49.) Applicant has one open credit card account, which has a \$1,000 credit limit. The balance on the account was \$250 as of November 2015. He uses it for groceries and cash advances to rebuild his credit. (Tr. 66-67.)

As of November 2015, Applicant's children were still living at home. His daughter attends graduate school as a commuter student while working full time in daycare. (Tr. 82.) He paid between \$2,500 and \$3,500 for her books and a laptop computer. (Tr. 64.) His son attended a career institute for which Applicant paid approximately \$4,000 of his son's \$25,000 tuition loan. His son works as a part-time custodian. (Tr. 63-64.)

With the decrease in their mortgage payment by \$800 a month since August 2015, Applicant has been giving his spouse \$200 a week to save for their daughter's wedding. (Tr. 69-70.) Applicant and his spouse do not have any other savings, although Applicant has a retirement account at work with an approximate balance of \$420,000. (Tr. 70.) Applicant took a loan from his 403(b) account in the past, but he could only borrow to the extent of his contributions. (Tr. 71.) He borrowed to renovate his parents' home, which he bought about 10 years into his marriage. He sold the home in 1999. (Tr. 71-72.) Applicant had \$306 in his checking account as of November 16, 2015. (AE D.)

## **Work References and Performance**

Applicant started with his employer in May 1988 as a technician. He has been promoted over the years to his current position, which he has held for the last 10 to 12 years. (Tr. 47.)

In 2012, Applicant worked on a program of importance to the U.S. military. The team's outstanding contributions were recognized by their employer and by a rear admiral for the military. (AE C.) During the October 2013 to September 2014 rating period, Applicant worked on unclassified portions of a classified program. His task leader on the project considered Applicant essential to the early progress of the program, but as the program progressed, there was less unclassified work. (AE B.) Applicant's performance evaluation indicates that he had shown himself to be very well organized and a good team member, but the next year was considered to be pivotal for Applicant in that he needed to learn new skills to contribute to the advancement of certain technology. (AE K; Tr. 44-45.)

Applicant missed considerable work time in 2014 for medical reasons and adjustments in his medications. (AEs K, L; Tr. 48.) In September 2014, Applicant was certified by his physician for leave under the Family Medical Leave Act for infusions medication every eight weeks on an indefinite basis for his medical condition and occasionally for flare-ups. (AE N.) He completed security awareness training at work in February 2015. (AE M.)

## 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 articulated 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 Guideline F concerns are established by Applicant's record of financial delinquency. He was chronically late in paying his mortgage (SOR ¶ 1.a) before February 2014, when he began working with his lender to reduce his delinquency. A credit-card account was charged off in 2012 for \$11,519 (SOR ¶ 1.b) and remains unpaid, although as an authorized user, Applicant would not be legally liable for repayment. A debt for furniture went unpaid after October 2008 (SOR ¶¶ 1.c and 1.j), and the creditor obtained a \$1,540 judgment against him in May 2013. Several of his payments on the judgment were returned for insufficient funds. A telephone company placed a \$347 debt for collection (SOR ¶ 1.d). A \$20 bad check issued in January 2009 became a debt of \$275 because it was ignored (SOR ¶ 1.e). A credit-card account was placed for collection for \$230 (SOR ¶ 1.f). In 2011, a \$15,054 judgment was entered against Applicant for nonpayment of a line-of-credit debt (SOR ¶¶ 1.h and 1.k). An unidentified medical provider placed a \$195 debt for collection (SOR ¶ 1.g). Disqualifying conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Additionally, Applicant testified that he co-signed on some \$60,000 to \$80,000 in student loans for his children. According to his credit report, a \$49,718 student-loan balance was charged off in 2014. Applicant also admitted at his hearing that he owes delinquent federal taxes of approximately \$12,000 for tax years 2012 through 2014 under a settlement reached with the IRS around September 2015. These sizeable delinquencies were not alleged in the SOR, so they cannot provide separate grounds for disqualification. Even so, they are relevant to assessing Applicant's financial situation going forward and whether his financial problems are likely to persist.<sup>4</sup>

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<sup>4</sup> 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. 09-07219 (App. Bd. Sep. 27, 2012). There is no evidence that the Government knew about the tax delinquency before the hearing. The settlement with the IRS was very recent and after Applicant had been pursued in court. Department Counsel could have moved to amend the SOR to include the tax debt but did not do so. Even so, the debt is relevant to assessing Applicant's financial judgment and the risk of recurrence of financial difficulties.

Mitigating condition 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,” cannot reasonably apply. The judgments were filed against him between 2011 and 2013, and two of the judgments have not been satisfied. Even assuming that Applicant’s wages have been garnished at \$12.50 per week since August 2010 toward the \$15,054 judgment, he still owes more than \$11,000 on the debt. Applicant had a record of insufficient-funds checks in repayment of the \$1,540 judgment debt before March 2015. His federal tax delinquency has yet to be addressed.

Applicant has largely attributed his financial difficulties to a loss of income from his part-time employment. In December 2009, Applicant was diagnosed with a medical condition that led to lost time at work. Applicant’s and his spouse’s household income in 2011 was \$7,376 less than in 2010. They had two children in college at that time. Applicant testified that he paid \$3,000 to \$4,000 of the \$25,000 in tuition for his son and that he paid other expenses. His high mortgage clearly contributed to his financial difficulties. However, his medical problems are a circumstance that implicates AG ¶ 20(b), which provides:

(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.

Applicant did not exercise the sound financial judgment required for full mitigation under AG ¶ 20(b) when he defaulted on the student loan debt. As a co-signer, Applicant is legally liable for the loan repayment. With the decrease in their monthly mortgage payment from \$3,410 to \$2,616 effective in August 2015, Applicant and his spouse have had an extra \$800 per month that they have saved in an account for their daughter’s wedding. While saving rather than spending is financially sound, he has yet to set aside any of these funds for his delinquent federal taxes. Applicant has known about his \$12,000 tax debt since September 2015 when he settled his tax dispute with the IRS.

Applicant is credited with making extra payments since March 2014 to bring his and his spouse’s mortgage (SOR ¶ 1.a) almost current in November 2015. In 2013, he settled the judgment in SOR ¶ 1.i on terms acceptable to the creditor. In March 2015, he settled the \$275 debt for the \$20 bad check in 2009. 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 to these efforts to resolve these debts.

Applicant had made monthly payments by money order since March 2015 toward the judgment in SOR ¶ 1.j (SOR ¶ 1.c same debt), but he issued several insufficient funds checks in repayment in 2013 and 2014, which raises some concerns about his financial stability, and he made no payments toward the judgment between September 2014 and March 2015. Applicant provided a wage statement showing that his wages are being

garnished at \$12.50 per week for the \$15,054 judgment in SOR ¶ 1.h (SOR ¶ 1.k same debt). Repayment by garnishment in response to a court judgment may qualify for mitigation under AG ¶ 20(c), but it is not considered a good-faith effort under AG ¶ 20(d). Even assuming that the wage garnishment has been in place since August 2010, the debt has been reduced only by about \$3,500. Additionally, Applicant has not disproven his liability for the medical debt in SOR ¶ 1.g, and it remains unpaid.

As for the other debts in the SOR, Applicant has made no payments to resolve the \$347 telephone debt in SOR ¶ 1.d, although the collection agency has decided not to pursue him for payment. Applicant claims that he paid the \$230 charged-off credit-card debt in SOR ¶ 1.f. Available credit records fail to substantiate any payment. However, the creditor has chosen to write off the debt and not pursue Applicant for payment. Applicant no longer has any legal liability for either debt. As an authorized user, Applicant would not be legally liable to repay the \$11,519 charged-off balance in SOR ¶ 1.b. However, he admits that he and his spouse incurred the debt for home or car repairs. For all practical purposes, the funds to address this debt will have to come from his household income. Mitigating condition AG ¶ 20(e) has some applicability in this case:

(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.

Those debts aside, Applicant has a long record of financial delinquency that includes some \$12,000 in recent federal income tax liability yet to be resolved. As of the close of the record, he did not have a plan in place to address his taxes. He has limited cash assets to pay off his taxes in the near future and has yet to discuss with his spouse putting money toward the taxes instead of saving for their daughter's wedding. There is also the issue of the \$49,718 student loan. The lender was reporting a zero balance on the account after it was charged off around May 2014. It is unclear whether Applicant will be pursued for any or all of that debt. He obtained two car loans, of \$18,050 in April 2013 and \$27,062 in April 2014, while the student loan was going unpaid. He is on a repayment plan with his electric company to address \$1,000 in past-due utility debt. His spouse may be pursued for the \$11,519 credit-card debt in SOR ¶ 1.b, and the income to pay that debt will have to come from their already strained finances. The financial considerations concerns are not fully mitigated.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of his conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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.

My analysis under Guideline F is incorporated in the whole-person assessment of Applicant's security clearance eligibility, but some factors warrant additional comment. Applicant has worked for his employer since 1988. He has a good work record. His contributions have been limited somewhat by the lack of a security clearance and not by a lack of dedication or commitment to his duties. He has worked part-time on the weekends since 2007, sometimes in two different jobs, despite a medical condition that requires ongoing pain management. These factors weigh in his favor under the whole-person assessment.

A determination of an applicant's eligibility for a security clearance should not be made as a punishment for specific past conduct, but on a reasonable and careful evaluation of the evidence to determine if a nexus exists between established facts and a legitimate security concern. At the same time, 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 (9<sup>th</sup> Cir. 1990). Applicant may be able to show at some future date that his finances are under control, but based on his current circumstances, I am unable to conclude that it is clearly consistent with the national interest to grant Applicant security clearance eligibility.

### 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:         | For Applicant              |
| Subparagraph 1.c:         | For Applicant <sup>5</sup> |
| Subparagraph 1.d:         | For Applicant              |
| Subparagraph 1.e:         | For Applicant              |
| Subparagraph 1.f:         | For Applicant              |
| Subparagraph 1.g:         | Against Applicant          |
| Subparagraph 1.h:         | Against Applicant          |
| Subparagraph 1.i:         | For Applicant              |
| Subparagraph 1.j:         | Against Applicant          |
| Subparagraph 1.k:         | For Applicant              |

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<sup>5</sup> Favorable findings are returned as to SOR ¶ 1.c and SOR ¶ 1.k because they are duplicate listings of the debts in SOR ¶ 1.j and 1.h, respectively, and do not represent additional balances.

## **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 Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Elizabeth M. Matchinski  
Administrative Judge