



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



In the matter of: )  
)  
) ISCR Case No. 13-01308  
)  
Applicant for Security Clearance )

**Appearances**

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

05/29/2014

**Decision**

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant defaulted on some consumer credit accounts, including his home loans, because of his divorce and a five-month layoff in 2009. His primary mortgage lender foreclosed on his home in 2011, leaving him with a deficiency balance on his second mortgage. As of late December 2013, Applicant’s second mortgage had been charged off. Three consumer credit accounts with a total balance around \$21,500 have been delinquent since late 2009. He otherwise has handled his finances responsibly, and he filed a Chapter 13 bankruptcy petition in April 2014 to address the debts, but it is too soon to conclude that his financial problems are safely behind him. Clearance denied.

**Statement of the Case**

On December 30, 2013, 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 security clearance eligibility 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 answered the SOR allegations on January 17, 2014, and he requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).<sup>1</sup> On February 21, 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 him. On March 19, 2014, I scheduled a hearing for April 30, 2014.

I convened the hearing as scheduled. Four Government exhibits (GEs 1-4) and 12 Applicant exhibits (AEs A-L) were admitted into evidence without objection. Applicant and a government employee familiar with Applicant's work performance testified, as reflected in a transcript (Tr.) received on May 8, 2014.

At Applicant's request, I held the record open for two weeks for post-hearing documentary submissions. On May 12, 2014, Applicant timely forwarded six exhibits (AEs M-R). On May 15, 2014, Department Counsel indicated that the Government had no objection to the admission of AEs M-R. Accordingly, the documents were accepted as full exhibits, and the record closed on May 15, 2014.

### **Summary of SOR Allegations**

The SOR alleges under Guideline F that as of December 30, 2013, Applicant owed two charged-off debts of \$88,220 (SOR 1.a) and \$5,073 (SOR 1.b), and two collection debts of \$9,927 (SOR 1.c) and \$6,550 (SOR 1.d). In his Answer, Applicant admitted the debts. He attributed his delinquencies to divorce and the loss of his employment, both occurring in February 2009. Applicant explained that he had hired legal counsel to assist him in filing a bankruptcy to address the debts.

### **Findings of Fact**

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

Applicant is a 52-year-old advanced planning specialist, who began working in the defense industry in October 1995. (GE 1; AE A; Tr. 43, 71-72.) He has been with his current defense contractor employer most recently since July 2009. He previously worked for the company from May 2003 to March 2008, and he held a DOD Secret clearance during that time. (GE 1; AE D.) He is seeking to maintain his security clearance eligibility. (AE M.)

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<sup>1</sup>When Applicant responded to the SOR, he had a previous version of the Adjudicative Guidelines. By letter dated February 13, 2014, Department Counsel furnished Applicant with the current version of the Guidelines effective within the DOD on September 1, 2006. (Tr. 10.)

Applicant has been married and divorced three times. He has no children. (GE 1; Tr. 77-78.) In June 1996, Applicant and his second wife bought an older, modest home for \$82,000. (Tr. 81.) They opened a joint mortgage of \$75,370, which they paid on time. (GE 3; AE G.) In February 2002, they refinanced their mortgage for \$84,000. Around February 2003, he and his second wife divorced after ten years of marriage, and she conveyed by quitclaim deed her share of the marital home to him. (GE 1; AE G.) In late May 2003, Applicant paid off his and his second wife's joint mortgage loan, and he signed an individual mortgage of \$94,000. In May 2005, he opened a second mortgage, of \$30,000, which he refinanced in March 2006 for \$70,000. (GE 3; AE G.) Applicant took out the second mortgage for a new roof and renovations to the kitchen and bathroom. (Tr. 83.)

In October 1995, he began working for an aerospace company in its production control organization. (GE 1; Tr. 43.) At work, Applicant's dedication and the quality of his performance stood out from the start. In November 1997, he was promoted to the position of coordinator of government spare parts at an increase in his hourly wage of approximately \$19. Applicant exceeded his job responsibilities on a sufficiently sustained basis for his supervisor to recommend in July 2000 that he be given an out-of-line merit increase in his salary to about \$23.30 an hour. (AE D.) A friend, who worked with Applicant at the aerospace company, attests to Applicant being "capable of handling any situation with thoughtfulness and maturity." (AE L.)

In May 2003, Applicant began working for his current employer in a senior materials management position. (Tr. 43.) Applicant met his employer's expectations during his first year, demonstrating ability to stay current on assigned activities and flexibility with changing priorities. Applicant continued to make sound planning decisions on the job with no disciplinary infractions, and he met all his job objectives in 2004 and 2005. Between September 2004 and March 2005, he completed training for a "Green Belt" in material flow process improvement. At the request of his employer, from June 2006 to January 2007, he was assigned full time to represent his organization in a receiving department at a nearby military base to deal with a significant backlog of program parts. In December 2006, he was formally recognized by his employer for his contributions in this special assignment. (AE D.)

In November 2006, Applicant married his third wife. (GE 1.) In mid-March 2007, Applicant refinanced his second mortgage for \$97,228 with a new lender (SOR 1.a). (GE 3; AE G.) In March 2008, Applicant left his job, which paid him \$53,000 annually, for a quality assurance position at \$64,500 annually with a robotics company. (GE 1; Tr. 41, 73.) He also had a shorter commute. (Tr. 41.) Around September 2008, Applicant and his third wife separated. She filed for divorce in November 2008. Without her income, he began to feel some financial strain, although he paid his debts largely on time. His employer was also losing sales, and in February 2009, Applicant was laid off from his job with one week's notice. Ten days later, his divorce was final. (GE 1; AEs A, E, F; Tr. 42.) He had no alimony or other support obligation as a result of his divorce. (Tr. 80.)

Applicant worked part time as a waiter from April 2009 to August 2009. (GE 1; Tr. 73.) In July 2009, Applicant returned to work for his current employer, in a senior planner position at annual pay of about \$57,900. (AEs A, D, G.) Applicant's debt was becoming

more difficult to manage, and he began to choose which debts to pay. (AE A.) Applicant made no payments on his primary mortgage after October 2009 or on his second mortgage (SOR 1.a) after November 2009. At two months behind, he attempted to make a partial payment of one month toward his primary mortgage, but it was refused. (AE A.) Around early January 2010, Applicant received a notice of threatened foreclosure from his primary mortgagor. On January 30, 2010, Applicant informed his primary mortgage lender that due to his recent divorce, a job layoff, and lower salary than in his previous job, he fell behind in his mortgage payments. Applicant asked this lender about a possible modification or refinance of his loan. Although he could pay the balance and late fees owed for November 2009, he could not afford any additional payments until his next pay period. The bank extended the deadline to February 3, 2010, for Applicant's November 2009 payment. The principal balance of his first mortgage was around \$61,771. The balance of his second mortgage was about \$86,000. (AE G.) In addition, around October 2009, Applicant stopped paying on two credit card accounts with respective balances of \$8,366 (SOR 1.c) and \$5,309 (SOR 1.d). As of December 2009, Applicant owed \$5,000 on a line of credit debt, which was referred for collection (SOR 1.b). (GE 3.) On February 19, 2010, Applicant contacted an attorney inquiring about a possible Chapter 7 bankruptcy filing. (AE G.) Applicant had a couple of meetings with paralegals, but he did not pursue bankruptcy at the time because it was not something that he wanted to do, especially where bankruptcy provided no guarantee that he would keep his home. (Tr. 107.)

In March 2010, Applicant received a notice of default on his primary mortgage. He was given until May 3, 2010, to pay \$2,972.25 to rehabilitate his loan. On July 7, 2010, his primary mortgage lender filed to foreclose on his loan. On July 27, 2010, the lender holding his second mortgage (SOR 1.a) filed for immediate possession and for a deficiency judgment against Applicant. (AE G.) Applicant continued to pay bills associated with the property, such as utility costs. (AE M.) In mediation, Applicant's primary mortgage lender offered in September 2010 to modify Applicant's loan, in arrears \$4,466.51 on the principal and \$1,958.71 on the escrow, if Applicant paid \$4,592.20 by October 20, 2010,<sup>2</sup> and immediately reinstated insurance on the property. On October 6, 2010, Applicant notified the court mediator that he could not afford the bank's offer. He could pay at most \$2,000 by the deadline if he depleted his 401(k). (AE G.)

In December 2010, Applicant learned that his 2003 model-year vehicle needed about \$4,000 in engine repairs ("literally the engine blew"). He replaced the vehicle with a 1991 sedan for \$2,000. (Tr. 102.) Approximately one month later, this vehicle caught fire and was destroyed. (AEs A, B; Tr. 46-47.) Applicant had to spend another \$2,500 for a vehicle, a 1993 model-year sedan, which he still owns. (AE A; Tr. 102.)

On January 4, 2011, the court issued a judgment of foreclosure by sale in favor of Applicant's primary mortgage holder. In April 2011, an appraiser valued the property at \$145,000. At foreclosure auction in May 2011, Applicant's property sold for \$81,000. (AE G.) The foreclosure sale satisfied the primary mortgage, on which he owed around

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<sup>2</sup> The fees demanded were past-due interest at \$2,168.65, \$325 for the property appraisal, \$148.02 in late fees, attorney fees of \$1,417.50, the \$300 complaint filing fee, and a \$233.03 state marshal's fee. (AE G.)

\$62,000.<sup>3</sup> (GE 3; Tr. 54, 84.) Applicant and his girlfriend of two years began cohabiting in an apartment that she leased. He paid half of the rent and security deposit. (GE 1; AE A; Tr. 103.) The contents of his foreclosed home went into a storage unit, for which he pays \$110 a month. (Tr. 103.) After his home was sold, Applicant continued to receive demands for payment of both his first and second mortgages. The primary mortgage holder acknowledged its error in September 2011 and deleted his account information. (AE G; Tr. 57.) Applicant continued to be billed for the second mortgage until at least August 2013. (GE 4.) After Applicant contacted the lender, the demands for payment stopped, although there is no evidence that the creditor (SOR 1.a) obtained satisfaction in full or in part. (Tr. 57.)

In January 2012, Applicant's credit card account with a bank (SOR 1.d) was placed for collection in the amount of \$5,310. In June 2012, the bank referred a second past-due credit card account for collection with a balance of \$8,367 (SOR 1.c). (GE 3.) Applicant contacted the collection agency to verify his debt balances, and to attempt to arrange for repayment, but he did not pursue it when the assignee would not work with him. (Tr. 86-87.)

On June 5, 2013, Applicant completed and certified to the accuracy of an Electronic Questionnaire for Investigations Processing (e-QIP). Applicant listed a May 2012 arrest for driving under the influence, for which he completed a first-time offender program. (GE 1.) Applicant estimates that he had to pay "close to \$1,500" in court and program costs.<sup>4</sup> (Tr. 90.) Applicant also disclosed the foreclosure of his primary mortgage in response to the financial record inquiries on his e-QIP. He added that he had done "as much as was humanly possible to modify or refinance [his mortgage] loans," but he had no success because he owed more than his home was worth in early 2010. He believed that the foreclosure sale, which netted about \$20,000 over what he owed, resolved both his first and second mortgages. Applicant also disclosed that he owed delinquent balances of \$7,800 on the line of credit account (SOR 1.b) and \$6,600 on a credit card account. He explained that he depleted his savings as a result of his divorce and job layoff, and he also had to pay cash to replace his automobile in late 2010. Applicant expressed his intent to contact the creditor in SOR 1.b within the week and arrange for repayment. Applicant indicated that the credit card debt had been charged off before he could afford to make payments.<sup>5</sup> Applicant added that his financial struggles over the past three years were not indicative of his entire life history or his plans for his future. (GE 1.)

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<sup>3</sup> Even with fees associated with advertising the foreclosure auction and for the title search, Applicant believes there should have been some proceeds from the sale to apply to the second mortgage. As of late April 2014, Applicant had no success in finding out what happened to any excess funds from the foreclosure sale. (Tr. 54-55.) Applicant testified that he received notice that the foreclosure action had been withdrawn at no cost to him, and he assumed that after the primary mortgage was satisfied, any remaining proceeds from the sale would take care of the balance of the second mortgage. He has since learned from a real estate agent that the mortgage lender has 20 years in which to file a deficiency judgment against him. (Tr. 55-56.)

<sup>4</sup> The offense was not alleged in the SOR. It is relevant only to the extent that the costs impacted his personal financial situation.

<sup>5</sup> Applicant indicated on his bankruptcy petition that the debt in SOR 1.c had been charged off. (AE I.)

As of June 12, 2013, Applicant's second mortgage was reportedly in collection with \$35,043 past due on an \$88,220 balance (SOR 1.a). (GE 3.) He also owed collection balances of \$5,072 (SOR 1.b), \$10,235 (SOR 1.c), and \$6,753 (SOR 1.d). (GE 3.)

On August 2, 2013, Applicant arranged to pay \$649 monthly to a debt resolution firm to resolve \$22,060 in debt (\$5,072 on SOR 1.b, \$10,235 on SOR 1.c, and \$6,753 on SOR 1.d). Applicant authorized automatic debit of the monthly payments from his checking account starting August 23, 2013. (AE H.) It is unclear how many payments he made, if any, before a routing error caused payments not to be processed. (Tr. 61.)

On August 6, 2013, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM), partially about the adverse credit information on his financial record. Applicant indicated that he fell behind in his payments on his line of credit account (SOR 1.b) because of his job layoff, and he had to use his savings to buy a car when his vehicle had mechanical problems. Applicant incurred the debt in SOR 1.d paying bills and living expenses, such as food and gas. He explained that he was in the process of arranging for repayment of his consumer credit debts, but that his second mortgage had been paid in the foreclosure. Applicant added that he was still receiving bills for the second mortgage in error, which he was trying to resolve. (GE 4.)

By November 2013, the bank holding the second mortgage (SOR 1.a) and line of credit (SOR 1.b) account had charged off his debts. Applicant was reported by Experian to be repaying a \$9,927 delinquent balance of SOR 1.c under a partial payment agreement.<sup>6</sup> His other past-due credit card account reportedly had a \$6,550 balance (SOR 1.d) with no progress shown (GE 2), despite his adjusted gross income of \$66,168 in 2013 (up from \$62,407 in 2012). (AE I.)

On November 12, 2013, Applicant's mother died following a three-year battle with a serious illness. (AE K.) On December 30, 2013, the DOD CAF issued an SOR to Applicant because of the second mortgage, the delinquent line of credit, and the two credit card accounts in collection.

On January 7, 2014, a \$5,106.63 judgment was issued to recover the debt in SOR 1.d. (AE I.) Applicant agreed to repay the debt at \$35 per week. (Tr. 61.) Between January 28, 2014, and April 11, 2014, Applicant made 20 payments of \$35 each. (AE R.)

On January 15, 2014, Applicant retained an attorney at a fee of \$2,306, payable in three installments, to file an uncontested no-asset Chapter 7 bankruptcy. Applicant was informed of the possibility of a Chapter 13 filing should financial analysis indicate a Chapter 7 case was not appropriate. On April 17, 2014, Applicant filed a Chapter 13 bankruptcy case. He listed \$161,639 in liabilities, of which \$2,973.25 was secured debt of two loans from his 401(k) at work. He owed \$996.75 on a December 2010 loan and \$1,976.50 on a

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<sup>6</sup> It is unclear how many payments were made or if they were made by the debt consolidation firm on his behalf.

February 2012 loan.<sup>7</sup> (AE I.) The first 401(k) loan was to pay bills while the second loan was opened to purchase a 2000 model-year pickup truck. (Tr. 79, 105.) Both loans are scheduled to mature in 2015. He listed \$145,193.46 in unsecured debt: \$139,840.46 in deficiency balance on the second mortgage (SOR 1.a); \$5,353 on the past-due line of credit account (SOR 1.b); \$8,366 in charged-off credit card debt (SOR 1.c); and \$5,106.63 in credit card debt in collection (SOR 1.d). Applicant reported estimated monthly income of \$4,089.12 after deductions and \$2,997.03 in ongoing monthly expenses. After adjustments allowed in a bankruptcy, his monthly disposable income was \$357.34. He proposed to pay the trustee \$394.38 per month for five years, while also maintaining payments outside of the bankruptcy of \$44.59 and \$145.19 per month for his 401(k) loans. His first payment to the bankruptcy trustee was due on or before May 17, 2014. The court scheduled the meeting of creditors for May 8, 2014. His creditors have until August 6, 2014, to file any claims. (AE I; Tr. 65-67.) Applicant has been led to believe from his attorney that there should be no objections to his plan. (Tr. 67.) As a precondition to filing his bankruptcy petition, Applicant received a briefing from an approved credit counseling agency. (AE I.) Applicant indicated on May 12, 2014, that he paid his first installment under the bankruptcy (AE M), although he provided no documentation of that payment.

As of late April 2014, Applicant had around \$500 in discretionary income before paying the \$394.38 proposed under his bankruptcy plan. He had about \$32,230 in his 401(k) retirement account. (AE I.) He owns two vehicles outright, a 1993 sedan and the 2000 pickup truck. He recently spent \$800 for mechanical repairs to the sedan. (Tr. 76.) He and his girlfriend still live together. She contributes to the household's utility costs from her income as a hairstylist. (Tr. 77.) Applicant is current in his rent of \$700 a month and his utilities. (Tr. 74, 85.) His income tax refund of \$1,200 for tax year 2013 went to pay part of his bankruptcy attorney's fee and for car repairs. (Tr. 86.)

Applicant's sister, who holds a prominent position in a state office (AE J), has reviewed Applicant's expenses, as shown on his bankruptcy petition. Together with Applicant, she refined his budget and addressed strategies to reduce his expenses. At his request, she has agreed to assist him with managing his finances. (AE N.)

Applicant did not allow his personal financial problems or the loss of his home to adversely affect his job performance. He has exceeded his job requirements since he returned to work for his employer in July 2009. (AEs D, O, Q.) Applicant frequently acted on his own initiative, consistently contributed to his team, and could be depended on to follow jobs through to their completion. He has no record of disciplinary actions. Applicant pursued professional development programs to improve his contributions to his employer and its military customer. Applicant's supervisor considers him to be an integral part of his advance planning group. (AE D.) A senior material planner, who became acquainted with Applicant in 2003, describes Applicant as "a self-driven individual, who assumes ownership, for the due diligence required to provide a quality product." (AE Q.)

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<sup>7</sup> The information about the 401(k) loans is in his bankruptcy petition (AE I), which shows only the current balances.

Applicant's duties for his employer onsite at a local military base require that he work with active duty personnel as well as DOD civilian employees. A production controller (AE P) and an assistant planning officer (Tr. 28-32) familiar with Applicant's work performance over the last four years both recommend Applicant. When the production controller was assigned to sensitive or classified projects, he would always seek out Applicant for the project because Applicant's integrity and ability to maintain confidence were not in question. Due to Applicant's technical knowledge, attention to detail, and management skills, he is "the 'go-to' guy for the most challenging assignments." (AE P.) The assistant planning officer, who is a DOD civilian employee, has worked closely with Applicant over the past four years. This planning officer knows about the foreclosure of Applicant's home, his divorces, and the vehicle fire that impacted Applicant's finances. (Tr. 29, 33.) This planning officer has no concerns about Applicant's ability to adhere to his security obligations. (Tr. 32.) On May 9, 2014, Applicant was designed as an information assurance officer responsible for operational security. (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 for financial considerations is 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.

Guideline F articulates several conditions that could raise security concerns. AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” are implicated by Applicant’s record of delinquent debts. Applicant bought a modest home with his second wife, but he took on larger amounts of mortgage debt with each refinancing. By the time he and his third wife were divorced in February 2009, Applicant’s mortgage debt was around \$150,000. He defaulted on his mortgages and on the three consumer credit obligations identified in the SOR. While attempting to save his home from foreclosure, he made no payments toward his mortgages or his delinquent consumer credit obligations, despite full-time employment at a salary of at least \$57,000 annually. Although the foreclosure sale of his home apparently satisfied his primary mortgage loan, he owes a deficiency balance on his second mortgage (SOR 1.a), which could be as high as \$139,840.46 due to accrued interest. A line of credit card account has been charged off with a \$5,353 balance owed as of April 2014 (SOR 1.b). In addition, two credit card accounts were placed for collection in 2012 with past-due balances of \$8,367 (SOR 1.c) and \$5,310 (SOR 1.d). As of November 2013, a collection agency was reporting unpaid balances of \$9,927 and \$6,550 on the accounts (GE 2), although Applicant listed the debts at their initial collection balances on his April 2014 bankruptcy petition. (AE I.)

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.

Applicant defaulted on the accounts in late 2009, but the debts were unresolved as of late April 2014.

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,” is partially established. Applicant experienced financial stress because of his marital separation from his third wife in September 2008, culminating in their divorce in February 2009, ten days after he lost his job due to economic circumstances. He relied on his savings and consumer credit to pay his living expenses. He was rehired by his current employer in July 2009, although at \$6,600 less annually than his salary with his previous employer. Vehicle expenses totaling \$4,500 in late 2010 into early 2011 were unforeseen. Perhaps he could have budgeted for expenses more responsibly, but he had no record of delinquency before his divorce and layoff.

However, it is difficult to find that Applicant acted fully responsibly toward his creditors. Applicant took on higher mortgage debt with each refinancing. For example, his \$30,000 second mortgage was refinanced in March 2006 for \$70,000. One year later, he refinanced with the lender in SOR 1.a through a new loan of \$97,228. His decisions to take on larger amounts of debt clearly made it harder for him to later cover his obligations when he lost his spouse’s income and his job. Applicant tried to refinance his primary mortgage. He told this mortgage lender in late January 2010 that he could make his past-due payment for November 2009, but there is no evidence that he made the payment. In July 2010, his primary mortgage lender filed to foreclose while the second mortgage holder filed for a deficiency judgment and immediate possession. Applicant entered into a court mediation program in the summer of 2010, but then he could not pay the \$4,592.20 by October 20, 2010, required by his primary lender to modify his loan. In January 2011, the court issued a judgment of foreclosure. His primary mortgage was paid off through the foreclosure sale of his home, but the second mortgage holder obtained no satisfaction. It is unclear what led Applicant to believe that both mortgage accounts had been closed with the foreclosure. The sale of his home netted only about \$19,000 over the balance of his primary mortgage, which was considerably short of the \$88,220 owed on his subordinate mortgage. As of August 6, 2013, Applicant was still receiving bills for the second mortgage, which he claimed he did not owe. Applicant testified to a telephone conversation with the lender, who promised to take care of it. Apparently the demands for payment stopped, but Applicant also did not follow up, despite advice from a real estate agent that the lender has 20 years to file for a deficiency judgment.

About the line of credit and credit card delinquencies (SOR 1.b-1.d), the evidence does not justify his inaction on the debts during 2012 and much of 2013. His adjusted gross income exceeded \$62,000 in 2012 and \$66,000 in 2013. While the \$1,500 in court and program fees for the May 2012 DUI offense was an unplanned expense which took funds that could have gone to these creditors, his misconduct is not a mitigating factor. Applicant arranged for debt consolidation in August 2013, but only after his security clearance eligibility was under review. There is some indication that a few payments may have been made before the routing error. Experian reported in November 2013 that the

debt in SOR 1.c was under a partial payment plan. However, Applicant did not continue with the debt consolidation, in large part because the assignee collecting the debt in SOR 1.d filed for a judgment against him.

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,” speak to efforts to resolve financial issues. Applicant’s consolidation of his debts in August 2003 only minimally implicates the mitigating conditions without a documented track record of payments under the plan. After a collection agency filed for a court judgment to recover one of the defaulted credit card debts (SOR 1.d), Applicant made 20 payments of \$35 each between January 28, 2014, and April 11, 2014, but those debt payments carry less weight in mitigation than had he entered into a repayment plan before being summoned to court.

Applicant’s very recent Chapter 13 bankruptcy filing is a legal means to address his debts, and he received a financial briefing from an approved credit counseling agency before he filed his petition. The DOHA Appeal Board has previously explained what constitutes a “good-faith” effort to repay overdue creditors or otherwise resolve debts under AG 20(d):

In order to qualify for application of [the “good-faith” mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant’s debts. The Directive does not define the term “good-faith.” However, the Board has indicated that the concept of “good faith” requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the “good-faith” mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)). AG ¶ 20(d) is not fully established by a Chapter 13 bankruptcy filing.

A wage-earner’s bankruptcy is a credible step toward resolving his delinquencies under AG ¶ 20(c) in that his creditors will receive a percentage of what is owed them. As of his security clearance hearing, Applicant had yet to make his first payment to the trustee. On May 9, 2012, Applicant asserted, albeit without corroboration, that he made his first payment. (AE M.) Assuming the payment was made, it would still be premature to fully mitigate the financial concerns under AG ¶ 20(c).

## 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).<sup>8</sup>

Applicant bought a modest home with his second wife, but he took on larger amounts of mortgage debt with each refinancing. By the time he and his third wife were divorced in February 2009, Applicant's mortgage debt was around \$150,000. The loss of spousal and employment income caused him to default on his mortgages and on the three consumer credit obligations identified in the SOR, but Applicant also bears some responsibility. While attempting to save his home from foreclosure, he made no payments toward his mortgages or his delinquent consumer credit obligations, despite full-time employment at a salary of at least \$57,000 annually. His primary mortgage was satisfied through a foreclosure sale of his home, but he did little to address his liability for the second mortgage. By 2012, his adjusted gross income exceeded \$62,000, and yet he made no payments toward his three known delinquent consumer credit accounts. Routine living expenses do not adequately explain his failure to address these debts.

The Government's concern about the recency of Applicant's Chapter 13 filing ("the ink is still wet") has merit. Applicant's first payment under the bankruptcy was not yet due as of his security clearance hearing. On May 12, 2014 (AE M), Applicant made his first payment to the trustee. Some corroboration of that payment would have been helpful in demonstrating his commitment to mitigate his outstanding debt. His payments from January 2014 to April 2014 toward the credit card judgment show he can maintain regular debt payments for a sustained period. Applicant's reputation at work for reliability and personal integrity suggests that he can be counted on to comply with his bankruptcy, provided he has sufficient income. Recent financial information shows he can afford the bankruptcy payment on his present salary. He shows some improvement in his personal financial habits in that he has not opened any new accounts or relied on consumer credit for purchases in the past three years. Applicant's sister has reviewed his budget with him, and together they identified strategies for further reducing his expenses. She is committed to helping him manage his finances so that his financial problems will not recur. However, given his bankruptcy has yet to be confirmed, it would be premature to conclude that his financial problems are safely behind him.

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

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<sup>8</sup> 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.

clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9<sup>th</sup> Cir. 1990.). For the reasons noted above, 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 continue Applicant's 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:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Elizabeth M. Matchinski  
Administrative Judge