DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
----------	)	ISCR Case No. 08-05778
SSN: ----------	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Gina Marine, Esquire, Department Counsel
For Applicant: Greg D. McCormack, Esquire

October 27, 2008

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on May 20, 2007. On June 24, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline F that provided the basis for its decision to deny him a security clearance and refer the matter to an administrative judge. The action was taken 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense as of September 1, 2006.

Applicant, acting *pro se*, answered the SOR allegations in writing on June 23, 2008, and he requested a hearing before a DOHA administrative judge. On August 5, 2008, the case was assigned to me to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for him. On September 4,

2008, I scheduled a hearing for October 2, 2008. On September 9, 2008, counsel for Applicant entered his appearance and requested a brief continuance. I granted his request on September 10, 2008, Department Counsel having no objection. On September 18, 2008, I rescheduled the hearing for October 7, 2008.

The parties appeared as scheduled on October 7, 2008. Five government exhibits (Ex. 1-5) and four Applicant exhibits (Ex. A-D) were admitted, over the government's objections about portions of exhibits A and B.[1] Applicant also testified on his behalf, as reflected in a transcript (Tr.) received on October 20, 2008. Based on a review of the pleadings, exhibits, and hearing testimony, eligibility for access to classified information is granted.

Findings of Fact

DOHA alleged under Guideline F, financial considerations, that Applicant owed about $18,379 on a debt in collection (SOR ¶ 1.a), and that he had a history of not meeting his financial obligations as evidenced by his recent settlement between September 2007 and January 2008 of about $45,695 in delinquent credit card debt (SOR ¶ 1.b). Applicant denied the allegations on the basis that he had settled all his outstanding debt, was not financially overextended, and lives within his means. He added that he had learned a valuable lesson and maintains a single credit card account with a minimal balance. After considering the evidence of record, I make the following findings of fact.

Applicant is a 56-year-old security guard who has worked for the same defense contractor since February 1979 (Ex. 1, Tr. 41). He held a security clearance throughout most of his employ until it was suspended on issuance of the SOR (Tr. 37, 42). He continues to drive company executives but requires his clearance so that he can handle classified documents placed in his office's control (Tr. 58).

Applicant relied on credit extensively for home improvements, college tuition for the younger of his two sons, and some travel (Tr. 45, 76). About $30,000 went to put a new roof and windows on his residence (Tr. 77, 109-10), which had been built in the 1940s (Tr. 112). He inherited the house from his father in 1989 and paid off the mortgage ten years later (Tr. 61). He charged about $20,000 of his son's college tuition (Tr. 107),[2] and about $5,000 or $6,000 for family vacations (Tr. 78-79). Applicant paid about double the minimum payments, approximately $200 per month on each of four

[1]Concerning the specific objections to portions of exhibits A and B, the absence of a handwritten signature on a settlement confirmation letter did not render Exhibit A inadmissible. It was issued on the letterhead of the law firm collecting the debt in SOR ¶ 1.a and contained the typewritten name of the firm in the signature block. As for Exhibit B, the government had legitimate concerns about the authentication of Internet-based complaints about the debt consolidation firm, and they were afforded little, if any, weight, but the document also contained Applicant's request to terminate his account and evidence of his payments to the debt consolidation firm.

[2]Applicant testified he did not look into alternative sources of funding (Tr. 109).

credit card accounts (Tr. 75, 97). He had no problems making the payments. He was involved in a long-time cohabitant relationship with a woman with whom he had two sons, who are now grown (Tr. 40-41). She was employed and contributing to the household expenses (Tr. 95).

In November 2005, Applicant and his significant other of some 30 years (Tr. 40, 74) terminated their relationship. Without her income, Applicant found it difficult to make his payments on the approximate $64,000 in accumulated credit card debt (Ex. 5, Tr. 44-45, 80).[3] To ensure that he could continue to make payments (Tr. 45-46, 73), Applicant retained the services of a debt consolidation company that he found on the Internet in about May 2006 (Ex. B, Tr. 46). In good faith, Applicant set up an account with the company and arranged for automatic withdrawal of $560 per month from his checking account for five years starting that month (Tr. 47-48, 71). Applicant understood that the debt consolidation company would in turn pay four consumer credit card balances for him (Ex. 48-49). From May 25, 2006 to September 25, 2007, the company directly and through a client services company debited a total of $560 per month from his checking account (about half for fees), but made no payments to Applicant's creditors (Tr. 73). Applicant assumed his creditors were being paid, and he did not notify the creditors of the debt consolidation agreement or confirm receipt of payments by the credit lenders (Tr. 50-52).

With no payments being made on four credit card accounts after May 2006, the accounts were subsequently referred for collection in the amounts of $12,600, $18,376, $19,187, and $14,408 (Ex. 5). In late 2006, Applicant began receiving calls from the creditors demanding payment of the delinquent balances (Tr. 50-51, 100). Applicant informed the creditors that he had arranged with a debt consolidation company to make payments on his behalf (Tr. 51). He called the debt consolidation firm, and was told that they were handling it and he should not be concerned (Tr. 52). Applicant understood from the debt consolidation company that it was still negotiating with his creditors. Sometime thereafter, Applicant began receiving calls from collection agencies. He told the debt consolidation firm that something had to be done, but he did not cancel the agreement (Tr. 101-04).

In May 2007, Applicant got married (Ex. 1). Applicant's spouse is a certified public accountant who works as a supervisor in a public accounting firm (Ex. D). In mid-May 2007, Applicant took out a $20,000 loan from his 401(k) account to pay some bills (Tr. 90, 99).

On May 20, 2007, Applicant completed an e-QIP on which he responded negatively to questions 28.a ("In the last 7 years, have you been over 180 days delinquent on any debt(s)?") and 28.b ("Are you currently over 90 days delinquent on any debt(s)?") (Ex. 1, Tr. 53). His account was still being debited by the debt

[3]Applicant testified that he was current on the four accounts (Tr. 45). His credit report of June 2007 (Ex. 5) shows a last activity date of November 2005 for his Discover Card account, but a more recent credit report of September 2008 (Ex. C) shows it was current until June 2006, which is consistent with his testimony.

consolidation company at $560 per month ("I had all this money tied up in this thing and I was hoping it was going to work for me." Tr. 101-04).

A check of Applicant's credit on June 20, 2007, disclosed the four delinquent credit card accounts. Applicant owed balances of $4,793 on a credit card account with the credit union at work, and $175 on a gasoline credit card account. They were rated as current and being repaid on agreed upon terms (Ex. 5). Within a month or so, Applicant was interviewed by a government investigator and questioned about his seriously delinquent accounts (Tr. 53-54).

Applicant contacted his creditors himself as he "didn't think [repayment through the debt consolidation firm] was going to work." (Tr. 54) Over the next few months, he worked out settlement agreements with the collection agencies on three of his four delinquent credit card accounts (Tr. 55-56). On September 10, 2007, he made an initial payment of $2,000 toward settling his $19,187 delinquent Visa card debt (Ex. A).

On September 17, 2007, the debt consolidation firm, acting through its affiliated banking services company, notified Applicant that he had $2,545.20 in set aside balances in his account as of August 24, 2007 (Ex. B). In October 2007, Applicant informed the banking services company that he wanted to close his account. Applicant cancelled the authorization for the debt consolidation company and its affiliate to debit his account by issuing stop payment orders with his credit union (Ex. B). Applicant was refunded about $2,000 of the $9,500 he paid to the debt consolidation firm (Tr. 57, 71).

On or about January 16, 2008, Applicant was notified that he could settle his $14,408.89 balance of a delinquent oil/national credit card by paying $7,204.44 in a lump sum within 15 days. Applicant paid it on January 30, 2008. With a final payment of $9,900, he also settled the $19,187 delinquent Visa credit card account for $12,000. The next day, he paid $3,630.06 to settle his $12,100.02 Discover card balance. (Ex. 2, Ex. A) Applicant obtained the funds from his and his spouse's accounts (Tr. 56), and through a loan taken out against his retirement account (401(k) account) at work (Ex. 2, Tr. 63-64). As of September 2008, the loan was still being repaid directly out of his pay at $117.43 per week (Ex. C).

In February 2008, DOHA asked Applicant to update the status of his four delinquent credit card accounts. On April 7, 2008, Applicant furnished documentation showing that three of his four delinquent credit card accounts had been settled. He indicated that he had contacted the fourth creditor, to whom he owed $18,379, and was still working on resolving that debt. Applicant notified DOHA that he had made about 18 months of payments to a debt consolidation firm that failed to perform, so he had to settle with the creditors. Applicant estimated that after payment of monthly expenses, his spouse's $319 car payment, and $200 on her credit cards, he and his spouse have a net monthly remainder of $2,873 (Ex. 2). He failed to account for a mortgage payment on a two-family rental property owned by his spouse (Ex. C, Tr. 39, 66, 69-70).

As of June 2008, Applicant had two open credit card accounts with balances: a gasoline card with a balance of $61 and a MasterCard account with a balance of $137. Both were rated as current (Ex. 3). On July 2, 2008, Applicant was notified by the assignee collecting his remaining delinquent account that its client had agreed to settle the $18,379 balance (SOR ¶ 1.a) on receipt of $15,825.17 by July 17, 2008. Applicant made the payment by cashier's check dated July 9, 2008, which was accepted as settlement in full (Ex. A).

In about July/August 2008, Applicant took out a five-year, $10,000 loan against his 401(k) account to pay for legal representation at his security clearance hearing (Tr. 64). The loan payments of $43.49 weekly are being taken directly out of his paycheck (Ex. C). He and his spouse implemented a household budget around that time (Tr. 82).

As of late September 2008, Applicant and his spouse had joint assets totaling about $881,087.07, which included his home valued at $452,600 and $146,067.53 in his 401(k) account at work. Applicant had an outstanding balance of $51 on a gasoline credit card account, and it was current. After payment of their joint expenses and debts totaling $5,284, they had monthly discretionary funds in excess of $1,300 (Ex. C, Tr. 67). As of October 7, 2008, Applicant had paid the balance of his gasoline credit card. His other credit card account had a balance of about $3,000 because he relied on credit to pay a portion of his attorney's fee (Tr. 83).

Applicant now understands that it was poor judgment on his part to have continued making the payments to the debt consolidation firm after he had been notified by the creditors that they were not receiving payment (Tr. 102). He is current on his present obligations and did not intend for any of his financial accounts to become delinquent (Tr. 59).

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 overarching adjudicative goal is a fair, impartial and common sense 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 as to obtaining 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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.

Applicant incurred sizeable credit card balances on four credit card accounts that with interest totaled about $64,000 as of May 2006. While the accounts were current, the balances were so high that he had trouble making the payments after he and the mother of his two sons ended their relationship in November 2005. While a significant portion of the debt (about $50,000) was for expenses that were necessary (roof, new

windows for an older home) and/or reasonable (college tuition for his son), a security risk is raised when one is so financially overextended. Given his inability to satisfy these debts in full on his income at the time, AG ¶ 19(a) ("inability or unwillingness to satisfy debts") is implicated.

In mitigation, once he realized that he was going to have trouble keeping the accounts current without some help, Applicant retained the services of a debt consolidation company to negotiate on his behalf with his creditors. Applicant fulfilled his obligations under the agreement in that he paid the company $560 per month for about 17 months. This qualifies as a "good-faith effort to repay overdue creditors or otherwise resolve debts" under AG 20(d). AG ¶ 20(b) ("the conditions that resulted in the financial problems 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") also applies because the delinquencies were caused directly by the malfeasance and/or neglect of the debt consolidation firm upon which Applicant relied in good faith to his detriment.

To be sure, Applicant should have checked into the business practices of the debt resolution company before he arranged for automatic withdrawal of monies from his checking account. It can reasonably be argued that Applicant was financially irresponsible in waiting until October 2007 to terminate his relationship with the debt consolidation company. He learned in late 2006 from his creditors that they were not getting paid, and collection agencies started contacting him in or before May/June 2007. Yet, in all fairness to Applicant, he had already paid more than $7,000 to the debt consolidation company by May 2007. His hope that the debt consolidation company would fulfill its obligations is understandable given the circumstances. Moreover, Applicant has settled the delinquent accounts. Over the September 2007/July 2008 period, Applicant paid more than $38,000 to his creditors. While a portion of the funding was from a loan taken out against his 401(k), the loan is being repaid directly from his wages. 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") applies. His financial problem has been resolved and his finances are clearly under control.

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 the applicant's conduct and all the circumstances in light of 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept.

The Appeal Board has 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 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 demonstrate 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).

Applicant's accumulation of about $64,000 in credit card debt shows a naivete in financial matters. He testified that he did not consider an alternative, such as a student loan to cover his son's tuition. He also showed questionable financial judgment in authorizing a company known to him only via the Internet to debit his account each month without checking into the firm's business practices. Yet, he clearly did not intend to defraud his creditors and has settled the accounts in good faith. He showed a "meaningful track record" in attempting to resolve his debt through the debt consolidation firm. His current financial situation is sound and he learned a valuable lesson that he is not likely to repeat. Based on a totality of the evidence, it is clearly consistent with the national interest to restore the security clearance that he held throughout much of his 29 years in the employ of the same defense contractor.

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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant

Conclusion

In light of the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

ELIZABETH M. MATCHINSKI
Administrative Judge