



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



In the matter of:)
)
-----) ISCR Case No. 08-06159
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Eric H. Borgstrom, Esquire, Department Counsel
For Applicant: Brian K. Valentine, Esquire

June 17, 2009

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant’s financial problems started after a job layoff in late 2001. Efforts to resolve his delinquent debts and to meet his other financial obligations, including court-ordered child and spousal support, are sufficient to mitigate the financial concerns. Clearance is granted.

Statement of the Case

Applicant submitted a Security Clearance Application (SF 86) on April 9, 2005. On November 28, 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 acknowledged receipt of the SOR on December 4, 2008. He submitted an undated Answer to the SOR allegations and requested a hearing. The case was originally assigned to another DOHA administrative judge on February 18, 2009, due to workload considerations. On March 3, 2009, it was transferred to me because it was within my area of geographical responsibility, and on March 13, 2009, I scheduled a hearing for March 31, 2009. Counsel for Applicant entered his appearance on March 24, 2009.

The hearing was convened as scheduled on March 31, 2009. The government submitted eight exhibits (Ex. 1-8) and Applicant submitted 39 exhibits (Ex. A-MM) that were admitted without any objections. Applicant and one witness, his security manager, also testified on his behalf, as reflected in a transcript (Tr.) received on April 9, 2009.

Procedural and Evidentiary Rulings

At Applicant's request, I held the record open after the hearing until April 14, 2009, for him to submit additional documentation. Applicant timely forwarded nine additional documents (Ex. NN-VV). On April 15, 2009, I ordered the government to respond by April 15, 2009, or the documents would be admitted into the record as marked. On April 16, 2009, Department Counsel indicated that he had received exhibits NN through UU and the government did not object to those eight exhibits. Accordingly, those documents were entered into the record as full exhibits.

Department Counsel did not comment on Applicant's affidavit identifying and commenting on the proposed exhibits, which had been marked as Exhibit VV and was clearly identified as such in my order. Department Counsel had been advised to inform me as soon as possible if he did not receive any or all of the proposed exhibits. In the absence of any indication from Department Counsel that he had not received proposed exhibit VV or that he had any objections, the document was also accepted into the record as an exhibit.

Findings of Fact

DOHA alleged under Guideline F, financial considerations, that Applicant owes delinquent debt totaling \$39,813 (SOR ¶¶ 1.a through 1.g). Applicant denied all of the debts. The lender for the \$19,792 mortgage debt alleged in SOR ¶ 1.a had not notified him of a residual balance after the foreclosure and action sale of his previous residence and had not pursued collection. Applicant contested the balance of SOR ¶ 1.b and the validity of the debts in SOR ¶¶ 1.e and 1.f. He provided documentation showing that the debt in SOR ¶ 1.d had been paid, and maintained that SOR ¶ 1.g had been satisfied as well. Applicant initially averred he did not recognize the medical debt in SOR ¶ 1.c, although he subsequently paid it. After considering the pleadings, testimony, and exhibits entered into the record, I make the following findings of fact.

Applicant is a 48-year-old certified safety professional, who has been employed primarily in the defense sector since he earned his bachelor of science degree in electrical engineering in 1985. He has held a security clearance for about 20 of the past

24 years, including for his work as a principal engineer in systems safety for his current defense contractor employer since April 2006 (Tr. 38). In addition to his regular employment, Applicant has had his own consulting business since March 2001, providing systems engineering and systems safety engineering services to industry (Ex. 1, Ex. A).

Applicant and his first wife married in November 1980, when he was only 20 and she was 25. They made their home in a western state where Applicant began college in 1981. Six children were born to them between March 1982 and September 1992 (Ex. 1, Tr. 67). One of their daughters died in 1989 at age 14 months (Tr. 68).

Applicant started his career as an electrical engineer with a defense contractor in its hazard's analysis department in May 1985 (Tr. 45). He was initially granted a confidential clearance for his duties (Ex. 2). On November 20, 1985, Applicant submitted a Personnel Security Questionnaire for a secret clearance (Ex. 2). In March 1990, Applicant was promoted to the position of a senior engineer with his employer (Ex. A), and he was granted a secret clearance in August 1991 (Ex. 1). On January 1, 1991, Applicant was designated as an associate safety professional by the board of certified safety professionals, having successfully completed the core examination for safety professionals (Ex. G). In about February 1993, he was laid off after almost eight years with his employer (Tr. 49).

Following a few months as a consultant field safety supervisor on a satellite launch vehicle project (Tr. 49), Applicant began working as a manager developing and implementing safety systems and environmental policy for a federal contractor located in the northeastern U.S. (Ex. A). The company ceased operations when the owner died, and in late September 1995, Applicant began working as an engineer for a defense contractor's armament systems division in the Midwest. While leading the system safety efforts for an international, contractor-funded demonstration validation program involving a light towed howitzer, he worked as a subcontractor on an arsenal ship launch system (Ex. A, Tr. 48). In August 1996, Applicant was board certified as a safety professional in system safety aspects (Ex. F). His earned income increased from \$51,611 in 1995 to \$62,742 in 1996 (Ex. W).

In about August 1998, Applicant and his spouse purchased the home that they had rented. They took out a principal mortgage of \$160,000 that was not beyond their means. Over the 1998 to 2000 time frame, Applicant had earned wages of more than \$75,000 annually (Ex. W).

In April 2001, he began working as a chief consulting specialist for a company in the metro Washington, D.C. area. He worked out of his home in the Midwest, but he was required to travel to D.C. In an effort to reduce the travel costs, he set up a field office in upstate New York at his expense (Tr. 66-67). In May 2001, he and his spouse took out a second mortgage loan on their home of \$68,550 (SOR ¶ 1.a) (Ex. 5, Ex. 7). In about August 2001, he and his spouse separated, and she returned with their two daughters and their youngest son to live with her father in the area where she and

Applicant had begun their married life (Ex. 1, Ex. 7, Ex. A). Their oldest son was already living on his own. Their 16-year-old son stayed with Applicant (Tr. 68).

Applicant was laid off in November 2001 due to a lack of federal contracts as the government began to focus on antiterrorism after September 11, 2001. Applicant took his 401(k) funds of about \$4,000 and gave them to his spouse for herself and their children, and he and his son lived off his unemployment compensation of \$1,200 a month (Tr. 69). Applicant's spouse filed for divorce in December 2001, although she withdrew the paperwork in March 2002 because he was still unemployed (Ex. 7).

Applicant's earned income dropped precipitously from \$88,218 in 2001 to only \$1,313 in 2002 and \$9,147 in 2003 (Ex. W, Ex. Y). He struggled to pay his mortgage and other bills due to his lack of income, and he fell behind on several financial accounts (Ex. 1). He made payments on an installment loan of \$3,383 taken out in December 2001 for a computer only through March 2002, and it was referred for collection (Ex. 6, Ex. 7). As of July 2002, he owed a medical debt of \$620.47 that he failed to pay (SOR ¶ 1.c) (Ex. CC). In September 2002, his primary mortgage became delinquent after his unemployment compensation ran out (Ex. 5, Ex. 6, Ex. 7, Tr. 158). He had stopped making regular payments on his second mortgage in late 2001 (Tr. 158, 161).

In September 2002, Applicant accepted a loan offer of about \$10,000 that he received in the mail (SOR ¶ 1.b). He used about \$7,000 of the loan to retain an employment agency's services, and used a portion to replace a failed refrigerator (Answer). He subsequently reconfigured the loan and obtained a new note for the balance of \$7,824 (Answer, Exhibit 5).

In mid-October 2002, Applicant took a field services position on commission. The job involved soliciting customers for a reengineering services business, and it required extensive travel, five to six days per week (Ex. 1, Ex. A). His teenage son was left alone in their home in the Midwest when Applicant was on travel. In November 2002, the barn on their property burned down. His son had put heat lamps in the barn to keep their dog warm, and the dog tipped over the lamps (Ex. 7, Tr. 14). Applicant's son left to live with his mother after the fire (Tr. 75).

Over the December 2002 to February 2003 time frame, Applicant had the aluminum siding replaced on his home due to storm damage incurred in September 2002. In January 2003, siding removal caused gaps in the foundation's insulation and the pipes froze, leading to flooding in the basement. After the siding was installed, he listed the home for sale at \$250,000 (Tr. 80) in about March 2003. While insurance paid for the siding replacement and basement damage, two dumpsters were left in his yard that hindered the sale of the residence (Tr. 76). In April 2003, Applicant received notice of foreclosure for failure to keep up with the mortgage payments. He filed for an extension to forestall the foreclosure under the state's homestead act (Ex. 7).

In April 2003, Applicant resigned from his job due to the excessive travel and expenses that he could not maintain. He began staying in New England as he looked

for a position on the East Coast (Ex. 1, Ex. 7). Applicant obtained a new realtor to sell his home in the Midwest, but the house was foreclosed on, and the holder of the second mortgage (SOR ¶ 1.a) bought the property in a sheriff's auction in July 2003 (Ex. 7, Ex. QQ, Tr. 77-78). Applicant did not believe that he had any further liability because the holder of the second mortgage had acquired his equity in the property (Tr. 77-79). The property had been valued at \$219,400 for tax purposes (Ex. RR), and he owed \$160,605.18 on the primary mortgage (Ex. QQ) and about \$18,223 on the second mortgage (Ex. 5).

Applicant's spouse proceeded with the divorce in 2003 after he became employed (Ex. 7). In March 2003, Applicant was ordered to pay \$721 in child support. The amount was increased to \$776 per month in June 2003 (Ex. 6, Ex. 7, Ex. LL). Applicant had given his wife some money for the bills, but had not made the child support payments. In about September 2004, he was ordered to pay \$998 per month in child support and \$1,200 in spousal support. His wages were garnished until the arrearage of about \$10,000 was paid off (Ex. 7). As of March 1, 2009, he had paid a total of \$63,581.41 in child support (Ex. LL) and \$64,800 in spousal support (Ex. MM).

For about six weeks in early 2004, Applicant worked as a mechanical inspector for an electronics company. At the end of February 2004, he returned to the defense sector as a senior engineer for a company in Virginia. Applicant had employment earnings of about \$69,134 in 2004 (Ex. W).

Applicant applied for renewal of his security clearance, completing a SF 86 on April 15, 2004. In response to the financial record inquiries, he listed the wage garnishment for the child support at \$1,700, and the foreclosure of his home in 2004. He responded "Yes" to question 38 concerning any debts over 180 days delinquent in the last 7 years, and listed 14 delinquent obligations totaling \$ 29,297, including the debts in SOR ¶¶ 1.b, 1.c, and 1.d. On or about April 9, 2005, he updated the SF 86 while still with the same employer, and indicated that \$5,917 of the debt had been satisfied, including the debt in SOR ¶ 1.d (Ex. 1), which was from an overdraft account (Tr. 124). In response to collection action dated March 26, 2004, Applicant began repaying the debt in late April 2004, by a first check in the amount of \$423.73 (Ex. 8). On receipt of a final payment of \$247.28 in February 2005, the debt in SOR ¶ 1.d was paid in full (Ex. DD).

From November 2004 to November 2005, Applicant pursued his master's degree in business administration from an online university. He took out loans totaling \$18,500 from a financial branch of the university in December 2004. According to Applicant, the loans required a prepaid interest and fee from the proceeds. After the fees for the first class were taken by the university, the residual balance was returned to the student. In late 2005, Applicant signed up for a class that he decided not to take because he was busy at work. Reminded by his financial counselor at the university that payment of \$1,369 was due by November 29, 2005, for the class beginning on December 6, 2005, Applicant requested at 7:49 p.m. on November 21, 2005, a form to request a leave of absence. He was advised that he would have to submit the request that day, which was his last day of class. At around 10:57 later that night, Applicant sent a scanned copy by

electronic mail to his financial counselor. University records fail to confirm receipt of the completed Leave of Absence form (Ex. HH), and Applicant admits he did not hear back from the university about his request at the time (Tr. 136). On January 17, 2006, Applicant was informed that because of a break in attendance, \$3,656 of his student loan funds had been returned to the lender and that he had a shortfall in his university account. Applicant disputed the debt on the basis that he had applied for the leave of absence,¹ but he returned to the university on January 31, 2006, with a reported shortfall of \$3,530 in his account. Applicant's application was recertified for a loan period of January 31, 2006, through April 18, 2006. After receipt of \$1,844 in payment by credit card for the new class and \$1,813.90 in financial aid, he owed \$1,716.10 (SOR ¶ 1.f) on his account (Ex. 3, Ex. 7, Ex. GG, Ex. HH, Tr. 135-38). In or about May 2007, the university referred the unpaid balance for collection (Ex. 5). Applicant subsequently requested confirmation that the funds had been returned to the lender so that he would not be repaying the debt twice (Ex. GG). The university continued to assert that he owed the debt balance.

In April 2006, Applicant began his present employment as a senior principal systems engineer. His secret clearance was transferred to his new employer (Ex. A). In mid-August 2006, Applicant and his then fiancée bought a three bedroom home for \$330,000 (Ex. U). They took out a joint mortgage loan of \$297,000 (Ex. 5), and a second mortgage of \$16,000 from the seller (Ex. S).

Applicant and his current wife married in December 2006, and Applicant became a stepfather to two minor children. Applicant's wife is a disabled veteran who is unable to work due to post-traumatic stress disorder. She was on social security disability of \$680 per month and received Veterans Administration benefits of \$2,390 (Ex. NN). Applicant had pretax earnings of \$139,823 in 2006, \$106,873 in 2007, and \$110,394 in 2008 (Ex. W). Applicant's spouse received no child support from the father of her two sons from the time she separated from him in 2002. Although the boys' father bought toys, computers, games, clothing, and shoes (Ex. NN), Applicant provided his stepsons with food and shelter. In January 2007, Applicant's spouse pursued child support from her sons' father. In May 2007, she began to receive child support at \$525 per month, but it began a difficult and costly court battle. The boys chose to live with their father, and in July 2007, he was granted sole legal custody. Applicant's spouse was awarded a judgment of \$5,010.72 to cover the costs of caring for her sons when she received no child support. But since the boys were living with their father, she was ordered to pay nominal child support of \$100 per month from September 2007. Applicant supported his spouse throughout the lawsuit and helped pay her legal fees (Ex. NN). In 2007 Applicant took out a loan (current value \$12,496 as of March 2009) from his 401(k) account at work. He used the funds to pay his spouse's legal expenses in the custody battle and some of his debts (Tr. 184, 197-98).

Applicant's credit report of May 30, 2007, listed several unpaid balances: a \$167 telephone debt in collection since March 2006; a \$1,750 utility (gas) services debt in

¹There is no evidence that the leave of absence was approved or even received by the university. The form included in Exhibit 7 does not bear the signature of a campus representative.

collection since February 2004 (SOR ¶ 1.e); a \$249 past due utility services debt from 2003; \$7,952 owed on the loan taken out in September 2002 (SOR ¶ 1.b); \$630 for medical services from June 2001 (SOR ¶ 1.c); a \$212 collection debt from November 2006 for an unpaid speeding ticket (SOR ¶ 1.g); the delinquency owed the university (SOR ¶ 1.f); a collection debt of \$881 for cellular telephone services; and a past due balance of \$18,223 on the second mortgage on the foreclosed property (SOR ¶ 1.a) (Ex. 5). Applicant was also past due 60 days on his mortgage on his current residence as of May 2007 (Ex. 5, Ex. KK).

On July 11, 2007, Applicant was interviewed by a government investigator about his financial issues. He indicated he and his spouse had joint monthly income of \$11,990, \$8,000 from his work as a safety engineer with a defense contractor and his spouse's veterans and social security disability benefits of \$3,990. After paying monthly expenses, including his child support, they had \$3,606.35 for miscellaneous and emergency expenses and repayment of a \$10,000 personal loan. Applicant was paying a friend between \$250 and \$500 a month for money borrowed when he was unemployed. Applicant acknowledged he had been contacted by a collection agency about the debt in SOR ¶ 1.b, and that he had not made any payments on the debt. He surmised that the \$212 debt was from a speeding ticket, but he had not been pursued for collection. Applicant indicated that with respect to his student loans, he had consolidated them in July 2007 and had not yet commenced repayment. He disputed the \$1,716 debt claimed by the university, and expressed his belief that the second mortgage (SOR ¶ 1.a) had been included in the foreclosure. He asserted he paid off the \$5,000 line of credit debt (SOR ¶ 1.d), but acknowledged a delinquent wireless phone debt of \$881 (not alleged in the SOR) had not been paid. Applicant was asked about delinquent local real estate taxes as well. He claimed to have not realized that they had not been paid, and he planned to set up an escrow account to pay them. Applicant indicated that he was 30 to 60 days late from time to time in his utility bills but he always caught up (Ex. 7). On September 7, 2007, Applicant was reinterviewed to discuss his child support arrearage. He indicated that the arrearage had been satisfied in late 2004 or early 2005. He was also asked about the \$630 medical debt, which he surmised was either for counseling sessions with his ex-wife in 2000 or for blood testing for his children (Ex. 7).

Applicant's and his spouse's joint adjusted gross income for tax year 2007 was \$88,644 (Ex. R), excluding her nontaxable VA benefit (Tr. 90). Yet, his credit report on July 17, 2008, showed outstanding balances on the debts in SOR ¶¶ 1.a, 1.f, 1.b,² and 1.e, and for telephone and utility services (\$167 and \$249 not alleged in the SOR). As of June 2008, Applicant also reportedly owed \$854 on a Discover card account closed by the grantor, and \$1,032 on a line of credit taken out in June 2007. He was current on his mortgage taken out in August 2006 (Ex. 4). As of September 30, 2008, Applicant's credit report had been updated to show he had paid the \$249 and \$167 utility/telephone debts. The balance of his consolidated student loan debt was reported to be \$18,453

²The credit report contained another listing for the creditor showing a \$10,350 balance as of December 2003. A \$7,952 balance was reported as of September 2004 (Ex. 4).

and it was rated as current (Ex. 3). In August 2009, Applicant satisfied the \$881 wireless phone debt (Ex. KK).

In response to DOHA interrogatories, Applicant indicated on September 19, 2008, that the \$167 debt and the \$5,192.73 balance of SOR ¶ 1.d had been paid (confirmed by documentation, see Ex. 8, Ex. DD). He again disputed any responsibility for the university debt in SOR ¶ 1.f. He explained that he had reconfigured the \$10,350 loan for \$7,952 (SOR ¶ 1.b), but he had been unsuccessful to date in reaching the current assignee. Applicant maintained that the gas company allegedly owed the \$1,750 debt (SOR ¶ 1.e) had agreed to remove it from his credit report (Ex. 8).

In addition to maintaining his full time employment, Applicant entered into a contract with another defense contractor in December 2008 to provide services through September 30, 2011, on a time and materials basis at a fixed hourly rate starting at \$117.38 for calendar year 2008 and ending at \$132.04 for calendar year 2011. The contract had a ceiling of \$74,723 (Ex. Q, Tr. 86). This contract work has been approved by his employer and it is contingent on renewal of his security clearance (Tr. 86-87).

Applicant satisfied the debt in SOR ¶ 1.g, which was for an old speeding ticket (Tr. 140), on January 5, 2009 (Ex. II). On or about March 26, 2009, Applicant sent a letter to the collection agency in SOR ¶ 1.b to inquire if it was still holding the debt (Ex. BB). The letter was returned by the postal service as undeliverable (Ex. PP). Applicant intends to make payments on the debt once he determines the correct collector (Tr. 133-34). On or before April 6, 2009, Applicant satisfied the medical debt in SOR ¶ 1.c, paying \$629.50 by credit card (Ex. OO)³.

Applicant continued to dispute with the credit bureaus the adverse credit listings in SOR ¶¶ 1.a, 1.e, and 1.f. As of March 20, 2009, the adverse credit data concerning the second mortgage (SOR ¶ 1.a) had been deleted from Applicant's credit report (Ex. Z, Tr. 81).⁴ The creditor allegedly owed the debt in SOR ¶ 1.e notified Applicant by letter dated December 15, 2008, that the adverse credit information (SOR ¶ 1.e) was incorrect and that the charges of \$1,102.04 would not be considered outstanding (Ex. FF). On or about February 19, 2009, Trans Union deleted the debt from Applicant's credit record (Ex. EE). However, on March 19, 2009, the university (SOR ¶ 1.e) notified him that upon review of his account, the past due \$1,716.10 balance was correct (Ex. HH). Applicant still disputes his responsibility because the university failed to inform him that there was a problem with his leave of absence. He wants the university to acknowledge its shortcoming before he pays the debt, although he acknowledges that

³Applicant testified he paid the debt in March 2009 by debit card (Tr. 123), but the evidence shows (Exhibit OO) it was paid by a MasterCard.

⁴Exhibit Z, the letter confirming that the collections servicing agency for the mortgagee had asked the credit bureaus to delete the tradeline from their records, was sent to Applicant's former spouse at the address of the foreclosed property. It is unclear why the letter was solely under her name. The credit reports show it was a joint mortgage loan so both Applicant and his former spouse were contractually liable. Although Applicant indicated in July 2007 that he became solely responsible for the debt following their divorce (Ex. 7), the debt had been deleted from his credit report as of March 28, 2009 (Ex. KK).

he will likely have to pay it because he needs to finish his classes for his M.B.A. (Tr. 139-40).

As of January 2009, the mortgage on Applicant's present residence had a principal balance of \$292,506.71. The monthly mortgage payment was \$3,885.49 due to a shortage in the escrow account⁵ (Ex. V). Once the escrow shortfall is paid off in September 2009, his mortgage payment will decrease by \$527.02 per month (Tr. 96). As of late March 2009, Applicant and his spouse had joint monthly income of \$11,691. Their joint monthly expenses totaled \$11,412.31, which included \$1,200 in spousal support for his ex-wife, \$582.16 in child support for his youngest child who is 17 (Tr. 92), \$370.44 for an unsecured loan taken out in October 2008 to cover a mortgage payment (Ex. KK, Tr. 184), \$300 for a \$7,500 personal loan debt owed a friend,⁶ and \$114.86 in student loan repayment (Ex. S). Applicant received notification from his employer that as of April 13, 2009, his annual salary would increase from \$111,300 to \$114,600 (Ex. TT).

Applicant has inquired into debt counseling but had significant reservations because of the potential negative impact on his credit score (Ex. SS). He is considering refinancing their mortgage since the interest rate is a high 9.5% (Tr. 97). Applicant owes a balance of \$500 on the closed Discover credit card account on which he is making monthly payments. The account was rated as current as of late March 2009 (Ex. KK). He has been late several times on his utility payments at his current residence (Tr. 185). Although Applicant will no longer have to pay child support after his son reaches age 18 in September 2010 (Ex. 1, Tr. 92), he is required to pay spousal support to his ex-wife for 26 years from the date of their divorce, provided she does not remarry (Tr. 190).

Applicant has not allowed any financial problems to negatively affect his job performance. A supervisor from Applicant's previous employment between February 2004 and April 2006 considered Applicant to be an extremely talented engineer and an asset to a military safety review board (Ex. O). Applicant supports several programs in his current job as the company's subject matter expert in systems safety. His demeanor and performance have been "exemplary." Applicant has adhered to the policies and procedures concerning the proper handling and safeguarding of classified and sensitive proprietary information (Ex. K, Ex. L, Tr. 152-53). He received overall annual performance ratings of outstanding in 2006 (Ex. J), and of excellent in 2007 (Ex. I) and 2008 (Ex. H). His acting manager recommended him for promotion to the position of a senior principal safety engineer (Ex. H). Applicant received monetary awards for his contributions in October 2008 (Ex. C) and in December 2008 (Ex. B).

⁵Applicant testified he had been unaware initially that the mortgage holder had not set up an escrow account. After he found out that he owed local property taxes, he set up the escrow account. The shortfall is expected to be satisfied as of September 2009 (Tr. 95-96).

⁶Applicant had borrowed \$10,000 from a friend when he was unemployed (Tr. 98). The balance of the loan is now about \$7,500 (Ex. S).

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “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 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 of the adjudicative guidelines:

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 has a history of financial problems more extensive than the SOR would indicate. He listed 14 delinquent accounts totaling \$29,297 on his 2004 SF 86, including a substantial child support arrearage that was paid off through garnishments of his wages. When he updated his application a year later, about \$5,917 of the debt had been satisfied, including the debt in SOR ¶ 1.d. He continued to resolve some debts, although as of his subject interview in July 2007, he owed several past due balances: a debt to the university of \$1,716 (SOR ¶ 1.f), unpaid medical debt of about \$630 (SOR ¶ 1.c), \$212 for an old speeding ticket that he did not consider a priority (SOR ¶ 1.g), about \$7,952 (SOR ¶ 1.b) on an installment loan taken out in 2002 to pay for professional job placement help, and about \$1,297 in utility/telephone balances not alleged in the SOR. As of the issuance of the SOR in November 2008, Applicant had paid the delinquent utility/telephone debts not alleged, but the debts in SOR ¶¶ 1.b, 1.c, 1.f, and 1.g had not been resolved. Significant security concerns are raised by "inability or unwillingness to satisfy debts" (AG ¶ 19(a)) and by "a history of not meeting financial obligations" (AG ¶ 19(c)).

Applicant's credit report continued to show a delinquent debt of about \$18,223 on a second mortgage following foreclosure of his residence in July 2003 (SOR ¶ 1.a), and a \$1,750 gas services debt (SOR ¶ 1.e) associated with the foreclosed property (Ex. 3). However, the evidence falls short of establishing that Applicant is liable for either of the alleged debts. Applicant does not deny that he stopped paying on his second mortgage in late 2001 after he was laid off, but he assumed any balance remaining on the loan had been less than the value of the property redeemed by the holder of the second mortgage in the foreclosure auction. There is no evidence that a deficiency judgment was granted the lender and Applicant received no notice of a deficiency balance. Similarly, while Applicant is sure that he owed a balance for gas services at the foreclosed property, the trade line was removed from his credit report. The creditor's accounting system was unable to confirm the balance or allow for repayment. Neither creditor intends to pursue collection at this point. While AG ¶ 20(e), "the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue," applies as to SOR ¶¶ 1.a and 1.e, Applicant has not successfully disputed his liability for the university debt in SOR ¶ 1.f

based on Exhibit HH. Applicant's leave of absence form, filed at the eleventh hour, was apparently not received by the university, and he must share some responsibility in that he made no effort at the time to ensure that all the paperwork had been properly filed and that his request had been approved.

AG ¶ 20(a), "the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment," cannot be fully applied in mitigation. While Applicant's financial problems started because of a job layoff in November 2001, the university debt was incurred in 2006 when Applicant was gainfully employed by a defense contractor earning a salary of about \$100,000 annually. That debt has yet to be paid. Moreover, the evidence shows that he was more than 60 days behind in his mortgage in April and May 2007. He borrowed more than \$10,000 from his 401(k) at work in 2007 to pay for his spouse's legal fees in her custody fight over her children and to pay some bills. He has had some recent difficulty meeting all his financial obligations on time.

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 implicated. After Applicant was laid off, his earned income dropped precipitously from about \$88,218 in 2001 to only \$1,313 in 2002 and \$9,147 in 2003. While he was paid unemployment compensation, it was not enough to cover the two mortgages on his home. Although he began working for a defense contractor in February 2004 at a salary of more than \$60,000 annually, his wages were garnished to repay his child support arrearage that accrued due to insufficient employment income. In 2007, Applicant and his spouse incurred legal fees related to the custody battle over her children which took funds that otherwise would have been available to resolve debts. This expense was voluntary but not frivolous. Applicant has also been paying \$1,200 per month in spousal support in addition to his child support since 2004, which has had a significant impact on his finances.

For AG ¶ 20(b) to fully apply, Applicant must have acted responsibly to address his debts once he was in a position to do so. In this regard, the government has legitimate concerns about Applicant's delay in resolving the debts in SOR ¶¶ 1.b, 1.c, and 1.g. He did not pay the \$212 speeding ticket until January 2009 because he did not consider it the most prudent expenditure, despite its relatively minor amount. His efforts to contact the collection agency in SOR ¶ 1.b were sporadic and initiated in the fall of 2008. He did not pay the medical debt in SOR ¶ 1.c until March 2009. At the same time, it must be acknowledged that Applicant resolved other delinquencies before the SOR was issued. Given the substantial negative impact of an unforeseen layoff, his compliance since 2004 with his child and spousal support obligations, and his efforts to resolve other debts that were not alleged, AG ¶ 20(b) fully applies.

Considering his handling of his debts as a whole, AG ¶ 20(c), "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, despite the fact that the debts in SOR ¶¶ 1.b and 1.f have not been resolved. He intends to repay his delinquent debt in SOR ¶ 1.b as soon as he can make payment arrangements with the creditor that holds the debt. While he continues to contest his responsibility for SOR ¶ 1.f, he realizes he will likely have to pay it. Applicant is likely to resolve these debts in the near future knowing that failure to do so could impact his job and his consulting contract. With the merit increase in his salary effective April 13, 2009 (Ex. TT), Applicant is in a better position financially. His finances will improve significantly once his escrow shortfall is satisfied in September 2009.

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 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 commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

The DOHA 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). For the most part, Applicant has “a meaningful track record” of paying his financial obligations. He complied with court-ordered child and spousal support obligations once he was in a financial position to do so. As for the debts that were not paid on time, Applicant has not continued to ignore or disregard the debts. He disputed the university debt through proper channels, and set up an escrow account with his mortgage holder to pay off his delinquent property taxes. He attempted to contact the creditor in SOR ¶ 1.b by telephone and letter. He continued to support his spouse in her efforts to retain custody of her children, even to the extent of borrowing from his 401(k) to pay her legal fees. Past and present coworkers who have had an opportunity to observe his dedication and compliance with security regulations hold him in high regard. Applicant is not likely to resort to illegal acts to generate funds to pay the proved unresolved delinquent debts, which amount to less than \$10,000. Based on a whole-person assessment, I conclude it is clearly consistent with the national interest to continue the security clearance that Applicant has held for some 20 years.

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
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant

Conclusion

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

ELIZABETH M. MATCHINSKI
Administrative Judge