DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
-----------------------	)	ISCR Case No. 09-01765
SSN: -----------	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: Kristen E. Ittig, Esq.

September 24, 2010

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

On September 4, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). 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 Adjudicative Guidelines (AG).

In a response to the SOR notarized on October 9, 2009, Applicant admitted six of the 20 Guideline F allegations and admitted the facts underlying the three allegations set forth under Guideline E. Applicant also requested a hearing. DOHA assigned the case to me on December 1, 2009. The parties agreed to a hearing date of January 20, 2010, and a notice to that effect was issued on December 16, 2009. That hearing was postponed because Applicant was out of the country at the time. It was rescheduled for February 10, 2010, but that hearing was postponed and rescheduled for February 22,

2010, due to inclement weather.[1] The hearing was convened as rescheduled and Applicant waived his right to a 15-day notice for the hearing.[2]

Department Counsel introduced 17 documents, which were accepted into the record without objection as exhibits (Exs.) 1-17. He noted that the debts referenced in SOR allegations ¶¶ 1.a, 1.d, 1.p, and 1,q had been either settled or satisfied, and that the debts noted in ¶ 1.f and ¶ 1.j are duplicative.[3] Applicant gave testimony, introduced one character witness, and offered six documents, admitted into the record without objection as Ex. A-F. Eleven documents were also offered by Applicant and admitted as hearing exhibits (HE) A-K.

Applicant was given until March 10, 2010, to supplement the record with any additional documents. The transcript (Tr.) of the proceeding was received on March 2, 2010. On March 24, 2010, Department Counsel forwarded 10 additional documents received from Applicant between March 4, 2010, and March 11, 2010. They were admitted collectively without objection as Ex. G (1-10). The record was then closed. On April 16, 2010, Applicant directly emailed to me and Department Counsel materials updating his debt status. On April 20, 2010, Department Counsel objected to the submission as untimely. In order to preserve a complete record of Applicant's debt status, the record was reopened and the document was accepted as Ex. H. The record was then closed.

On May 10, 2010, Applicant again directly submitted a document. Against Department Counsel's objection, I admitted the document as Ex. I with the request Applicant expeditiously submit a demonstrative exhibit reflecting the updates to the record. On May 28, 2010, Applicant submitted the requested demonstrative exhibit, including copies of previously admitted documents in an effort to provide a more complete representation of Applicant's current debt status. On June 10, 2010, I received a June 7, 2010, objection to Applicant's submission from Department Counsel urging that the submission was untimely.[4] Inasmuch as the latest submission was helpful in incorporating the various post-hearing submissions into the record, it was accepted as Ex. J. Upon admission, the record was closed on June 10, 2010. Based on a thorough review of the testimony, submissions, and exhibits, I find Applicant failed to meet his burden regarding the security concerns raised. Security clearance denied.

Findings of Fact

Applicant is a 49-year-old program manager for a defense contractor. He has worked for that employer for the past decade. Applicant has earned a high school diploma, an associate's degree In aeronautics, and a specialized professional license.

[1] Tr. 11.

[2] *Id.*

[3] Tr. 12. This representation was later confirmed.

[4] Ex. 22 (Letter, dated Jun. 7, 2010)

He served in the United States (U.S.) military for nine years. Applicant is married and has four children. Because he works abroad almost 80% of the time, maintaining contact with his family is difficult.

Before 2004, Applicant had no serious financial difficulties. In 2004, he purchased a new home. Shortly thereafter, he was injured and underwent extensive back surgery in late 2004.[5] During nearly five months of recuperation, he exhausted his vacation time. He then relied on short term, then long term disability.[6] His disability payments paid him at approximately 60% of his usual salary, based on an annual income of about $90,000. His wife, a registered nurse, took an unpaid leave of absence from her $50,000 a year job to care for Applicant during the first few months of his recovery. During this period, their household income dropped from about $140,000 to approximately $54,000.[7] When Applicant returned to work in February 2005, he resumed his $90,000 per year position.[8] After about 12 to 18 months, he resumed his extensive travel schedule. He currently earns approximately $130,000 a year.[9] When Applicant's wife returned to work in 2005, she returned on a part-time basis, earning about $30,000 or $35,000 per year until 2009, when she only earned about $1,000.[10]

During his recuperation and transition back to full-time employment, Applicant had serious difficulty paying his family's expenses. Five months with a considerable cut in income produced a financial "domino effect" on his finances.[11] His household income was also substantially reduced by his wife's return to work on a part-time basis. He relied on his savings to supplement his income. Then, in middle or late 2005, he joined a credit counseling service. The service provided little help. Some creditors would not work with the service, and service fees were high. After about three months, he abandoned the credit counseling service. He then consulted attorneys who advised him to declare bankruptcy, but he chose to honor his creditors directly.[12] Ultimately, in 2006, he began working with his creditors directly. He first started paying off tax liens, then started working with those creditors that were willing to work with him immediately. He then moved on to other creditors in an effort to work out repayment plans. He is now working with his employer to satisfy his debts. He hopes to have all of his debts paid off

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[5] Tr. 112.

[6] Tr. 28.

[7] Tr. 112.

[8] Tr. 113.

[9] Tr. 53.

[10] Tr. 113-114.

[11] Tr. 108, referencing Applicant's reduced income and temporary elimination of his wife's income during his convalescence.

[12] Tr. 33.

in 18 to 24 months.[13] Devoted to his work, Applicant is willing to continue working overseas at higher wages 75% to 80% of the time in order to expedite the resolution of financial difficulties.[14]

After the hearing, some of the debts at issue in the SOR were paid or settled by Applicant's employer, which has "agreed to immediately repay all of [Applicant's] past due debts."[15] In his March 8, 2010, post-hearing declaration, the founder and Chief Operating Executive (CEO) of Applicant's company, demonstrated his full trust and faith in Applicant. Apprised of Applicant's financial distress after the hearing, he surmises that Applicant is capable of resolving his own financial difficulties. "[16] The CEO operates his business like a family. He noted that had he been aware of Applicant's financial woes, the company would have assisted Applicant earlier to help him address his debt. He has arranged to have the entity's finance manager "settle each of [Applicant's] debts" directly with each creditor.[17] Applicant will then be subject to a no-interest loan "advance against such future bonuses and pay raises, along with biweekly payroll deductions."[18]

At the time of the March 2010 declaration, the company believed that the delinquent debt subject to this arrangement would be approximately $27,000 or $49,800 if a debt to the Internal Revenue Service "is rolled in."[19] The March 2010 declaration states that coordination of payments on Applicant's debts would be made within three weeks or as quickly as possible depending on cooperation by Applicant's creditors.[20] A no-interest loan advance repayment would then commence. Under that plan, "[p]ayroll deductions will be remitted each month over the next 24 months, and up to 75 percent of any bonuses (Annual Appraisal, Team Award, and/or Individual Incentive Award) accumulated during the next two (2) years" will similarly be applied to the loan balance through automatic payroll deduction.[21] The employer has offered such aid to others in the past. The CEO believes Applicant is loyal, committed, and deserving of this aid.[22]

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[13] Tr. 34.

[14] Tr. 115-116.

[15] Ex. G (1) (Counsel's email, dated Mar. 10, 2010) and Ex G (2) (Declaration, dated Mar. 8, 2010).

[16] Ex. G (2), *supra*, note 15.

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] *Id.; see also* Tr. 12–124.

Before the record closed in June 2010, no final agreement reflecting a total sum certain or specifically enumerating which of Applicant's debts the entity has paid or is willing to pay on Applicant's behalf was submitted.[23] Similarly, no submission was offered noting whether any of the debts at issue are excluded from this agreement. No evidence was presented reflecting what actual or projected net monthly income Applicant would receive after deductions toward this loan are taken, nor was a family budget introduced showing how Applicant would live on his revised income after payroll deductions for the loan. The payments thus far paid by the business on Applicant's behalf are noted below as having been paid by a business check. The company is an established entity. Its mailed checks are presumed to be valid evidence of payment to the payee. There is no indication whether payments made directly by Applicant before March 8, 2010, are subject to reimbursement by the company for incorporation into the loan, or whether Applicant's post-March 8, 2010, payments might be reimbursed for incorporation into the loan. The employer's declaration provides that Applicant will work with a financial management consultant for "advice and assistance."[24]

The debts referenced in SOR allegations ¶¶ 1.a, 1.d, 1.p, and 1,q have been either settled or satisfied, and the debts noted in ¶ 1.f and ¶ 1.j are duplicate entries reflecting the same debt noted as ¶ 1.a.[25] Substantial evidence was offered establishing these facts. The debts remaining at issue in the SOR are ¶¶:

1.b – August 2008 Judgment for $763. *Settled.* Applicant settled the judgment balance of $1,015.32 for $812.26 on or about April 8, 2010. A business check for that amount was mailed to the collection entity on April 10, 2010. No receipt of payment was presented. Lacking objection by the Government, official postal service mailing of that check, as represented, provides adequate evidence that this debt is resolved. *See* Ex. J, Tab B.

1.c – June 2007 Judgment for $12,615. *Settled*. Applicant negotiated a settlement for this debt, now with a balance of $16,050.18, by which payment of $11,500 before April 30, 2010, would satisfy this debt. He provided evidence that a business check was mailed for $11,500 on April 13, 2010, providing adequate evidence that this debt has been resolved. Barring objection by the Government, I find this debt is addressed. *See* Ex. J, Tab C.

1.e – October 2007 Judgment for $563. *Paid*. This judgment was filed in county court in October 2007. Applicant provided a copy of a law firm's letter referencing A/C No 14231

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[23] Based on the evidence submitted on May 28, 2010, and discussed below, it appears that approximately $18,300 has thus far directly been paid by Applicant's employer to pay or settle his debts. As noted, there is no indication whether it has or will absorb into the advance loan those debts paid or settled by Applicant by telephonic payment, check, or money order. Similarly, there is no evidence whether the IRS debt referenced in the declaration, but not at issue in the SOR, has been paid by either Applicant or his employer.

[24] Ex. G (2), *supra*, note 15.

[25] As noted above. *See also* Tr. 12. The Government also indicated that the debt at SOR allegation ¶ 1.u was settled or satisfied, but there is no allegation ¶ 1.u.

and the name of the same creditor as noted in the judgment which was written in October 2006, before the judgment was entered. He also provided a copy of a recent business check in the amount of $794.52 to that law firm and proof of mailing. The check does not indicate the name of the underlying creditor or an account number, but the payment effort is linked to the debt by its being made payable to the law firm shown as representing the creditor. There is no evidence Applicant's employer was willing to pay for any debts not at issue. Therefore, in light of this evidence, there is adequate evidence this debt is paid. *See* Ex. J, Tab E.

1.g – Mortgage Past Due approximately $11,000. *Status unclear*. Applicant provided evidence that in August and September 2009, he was working with this creditor regarding a repayment plan.[26] His efforts were sufficient to divert steps toward foreclosure. Under the plan referenced, payment on the debt was to have continued through May 2010. Applicant provided no evidence that payments on this plan have been made or that the balance has been reduced since the 2009 exchange of correspondence. *See* Ex. J, Tab G. Applicant did, however, submit a pre-printed mortgage stub designated "Paymt. No. 4," with an "ON [illegible] PAYMENT DUE" of $2,655.58 due on "APR. 1, 2010," and a "LATE PAYMENT" balance due date for payment after "APR. 16, 2010" of $2,726.30. *See* Ex. G (6). No evidence of an April 2010 payment, any post-September 2009 payments, or an updated balance was offered to show this debt's current status and balance.[27]

1.h – Debt for $73 and 1.i for $119. *Insufficient evidence.* Applicant provided evidence that his electronic payment for $80 was processed by this creditor on April 13, 2010. *See* Ex. J, Tab H. He represented that the payment was for the $73 debt. The account number for the account balance paid does not correspond with the account numbers shown on the credit reports for these accounts, although notice is taken that medical account numbers on credit reports do not always reflect the underlying entity's actual account number.

1.k – 1.m – Debts for approximately $11,129. *Settled*. These three accounts were settled by payment of $4,100, remitted on a business check and mailed on April 12, 2010. Department Counsel stressed that "it is critical to note that these debts were settled for a fraction of the total amount owed."[28] *See* Ex. J, Tab K.

1.n – Charged-off Account for approximately $6,060. *Insufficient evidence.* A judgment in the amount of $9,282.97 was ultimately entered against Applicant in 2006 for this debt.[29] The creditor is named in the county's judgment order. It is the same creditor

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[26] Ex. J, Tab G (Correspondence). *See also* Ex. G (7) (Email, dated Sep. 14, 2009), noting that as of September 2009, Applicant was "actively repaying on a repay plan."

[27] *See also* Tr. 134.

[28] Ex. K (Letter, dated Jun. 7, 2010).

[29] Ex. J, Tab N (Income Execution and related paperwork).

noted in the SOR for this debt. Payment is shown on this judgment in the amount of $8,388.77, in July 2008 to the county sheriff. There is no evidence that a second, separate judgment by this creditor was obtained by this creditor against Applicant.[30] However, there is no link showing the $8,388.77 payment was made toward or satisfied this $9,282.97 judgment. *See* Ex. J, Tab N. No documentation shows why there is a discrepancy in the amount of payment.

1.o – Charged-off Account for approximately $7,095. *Settled*. This account was settled for an undisclosed amount in 2005. *See* Ex. J, Tab O.

1.r – Collection Account for approximately $74. *Paid*. Applicant showed evidence of a United States Postal Service money order in the amount of $74.50 payable to this creditor. *See* Ex. J, Tab R.

1.s – Collection Account for approximately $541. *Insufficient evidence.* Applicant provided evidence of a settlement offer to resolve this matter on payment of $162.95. The offer has "$320.06. Check by phone. 4/7/2010" handwritten on it, but there is no evidence of payment, receipt, or transaction, such as a bank statement or on-line statement indicating the payment was successfully made. *See* Ex. J, Tab S.

1.t – Collection Account for approximately $1,114. *Settled*. Applicant provided evidence of a February 2010 offer to settle this balance for a 70% savings by payment of $334.44 in the form of a business check mailed on April 10, 2010. *See* Ex. J, Tab T.

Applicant, in citing to relevant Appeal Board case law, argued that "the question is not that the Applicant has paid off all of the indebtedness before the security clearance arises, only they they've established a reasonable plan to resolve the debts, and that they've taken significant actions to implement the plan."[31] Department Counsel urges, among other arguments, particular consideration of not just the establishment of a reasonable plan, but the timing of payments in respect to an applicant's payment history.[32]

In addition to Applicant's finances, his execution of a security clearance application on or about September 5, 2008 is at issue. Before completing that application, he did not check his credit report.[33] At the time, he knew only that he had

[30] *See* Exs. 5-13 (credit reports from Nov. 5, 2009, Aug. 5, 2009, and Nov. 4, 2009, six filings of judgments and liens, and county court record). Applicant testified that he has had only one account with this creditor. Tr. 91. Ex. 5 (Credit report, dated Nov. 4, 2008), however, reflects two account entries with this creditor. Although they share the same date of account opening, they reflect different dates of last activity and account numbers.

[31] Tr. 143-144. *Compare* Tr. 132-134, 137.

[32] Tr. 130.

[33] Tr. 98.

"some debts."[34] He was in a rush to complete the application, basing his answers on a previous application.[35] On that application, in response to Section 27c, he denied having any property liens for taxes or debts, despite the ultimately resolved obligation noted in SOR allegation ¶ 1.d. In response to Section 27d, he denied having had any adverse judgments in the preceding seven years that had yet to be paid, although unpaid judgments were then existent.[36] In response to Section 28, he admitted being "currently over 90 days delinquent on any debt[s])" and denied being "over 180 days delinquent on any debt[s])."[37] When instructed to supply account information if he answered "yes" to either question regarding delinquent debts, he noted only the debt listed in the SOR as ¶ 1.j. He did not consider any debts upon which he had made payments or was working with the creditor as delinquent.[38] Applicant described his omissions as a "mistake."[39]

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. 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 commonsense decision. Under AG ¶ 2(c), this 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.

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[34] Tr. 98-99, .

[35] Tr. 99-100, 115-116.

[36] Regarding the judgments, Applicant was apparently unaware that some of what he thought were debts were, in fact, judgments. *See*, *e.g.*, Tr. 100. Applicant never appeared in court for any of the proceedings leading to his adverse judgments. Tr. 104. He was often overseas and usually only received collection calls or information regarding those calls. *Id.*

[37] Ex. 1 (Security clearance application, dated Sep. 5, 2008) at 28-29 of 31.

[38] Tr. 97-98.

[39] Tr. 100.

The government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ."[40] The burden of proof is something less than a preponderance of evidence.[41] The ultimate burden of persuasion is on the applicant.[42]

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 an 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). "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."[43] Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.[44]

Based upon consideration of the evidence, Guideline F (Financial Considerations) is the most pertinent to this case. Conditions pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

Analysis

Under Guideline F, "failure or an inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or an unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified

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[40] *See also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

[41] *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

[42] ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

[43] *Id*.

[44] *Id*.

information."[45] The guideline sets out several potentially disqualifying conditions. Here, Applicant admitted several of the numerous delinquent debts enumerated in the SOR, entries derived from his credit reports. Many date back to late 2004 through 2006, an acknowledged period of financial difficulty. Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts) and FC DC AG ¶ 9(c) (a history of not meeting financial obligations) apply. With such conditions raised, the burden shifts to Applicant to overcome the case against him and mitigate security concerns.

The SOR lists 20 delinquent debts (¶¶ 1.a-1.t) amounting to nearly $74,000. In his response to the SOR, Applicant admitted to six of the 20 SOR allegations, representing approximately $14,560 in delinquent debt, and, with explanations, denied the remaining debts alleged. At the hearing, Applicant attributed his acquisition of delinquent debt mainly to a period between late 2004 and 2006, when he was seriously injured, underwent surgery, and had a protracted convalescence. For about five months, he generated a significantly reduced income and his wife took unpaid leave to aid him. During that time, their household income was reduced from about $140,000 to approximately $54,000. Since that time, Applicant's health has improved, he has returned to work, and he now spends approximately about 75% of his work effort abroad in order to earn a higher income to help him address his financial situation. In 2006, he utilized a credit counseling service to address his debts, but the venture was unproductive. Lawyers advised him to declare bankruptcy, an option he declined to pursue. He then decided to address his debts on his own, one at a time. At the February 2010 hearing, Applicant's employer surmised the extent of Applicant's debt and chose to intercede, continuing an apparent corporate tradition of treating the entity as a family. The CEO graciously offered to pay or settle Applicant's remaining debts and pursue recoupment for the sum expended on Applicant's behalf through a payroll deduction repayment plan. In March 2010, the employer outlined the terms of this arrangement. The most recent evidence shows that the employer has thus far obligated over $17,000[46] on an overall assessment of Applicant's debt that ranges from $27,000 to $49,800, depending on whether a federal tax debt not at issue in the SOR is incorporated.

Applicant presented evidence that most of the numerous debts at issue have been settled or paid. Conversely, several debts remain unsatisfied or lack clear evidence of either their satisfaction or their current status. This includes the delinquent debts cited in SOR allegations ¶¶ 1.g, 1.h, 1.i, 1.n, and 1.s, involving a total sum in excess of $18,000. Moreover, Applicant offered his employer's assurance that it would lend Applicant the necessary sums to satisfy his debts. While the employer's expression of confidence in Applicant is clear and the CEO's benevolence is striking, the gesture arrives late in the process. In addition, the payment/repayment plan's relatively specific terms fail to identify exactly which delinquent debts of those at issue

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[45] AG ¶ 18, which also notes, "An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds."

[46] Regarding the debts cited at SOR allegations ¶¶ 1.b, 1.c, 1.e, and 1.k.

here are, have been, or will be satisfied directly by the business. Furthermore, lacking a specific total sum of the debt transferred from delinquent creditors to employer, assessment cannot be made with regard to whether the loan can be repaid in the time allotted; whether the undefined payroll deductions will leave Applicant with sufficient funds to maintain his current lifestyle, obligations, and needs; or whether Applicant will continue to derive an income sufficient to honor his repayment obligations if a security clearance is not maintained. Given these considerations, and the fact the record lacks evidence that all of the debts at issue have been adequately addressed, FC MC AG ¶ 20(a) (the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment) does not apply.

Clearly, Applicant's medical issues and related surgery were unforeseen. A related and unexpected, drastic drop in household income from about $140,000 a year to approximately $54,000 a year for a five-month period is highly significant. After his recuperation, Applicant pursued credit counseling, legal help, and self-budgeting to address his debts, albeit with varying rates of success. Such facts give rise to FC MC AG ¶ 20(b) (the conditions that resulted in the behavior 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).

As part of Applicant's employer's loan advance and repayment plan, Applicant was required to meet with a financial management consultant for advice and assistance. While there is no evidence as to the extent of this consultation or whether it has transpired, the facts indicate that the employer is resolute in its offer overall. Assuming Applicant met with this consultant and received or is receiving a program tantamount to financial counseling, and in light of evidence that many of the debts at issue have been paid, settled, or are being resolved, FC MC ¶ 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 to those delinquent obligations. In addition, given the number of debts thus far addressed and adequately documented, FC MC ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies.

It is plain that the "domino effect" of Applicant's injury, surgery, and recuperation, which featured a five-month long, approximately 61% reduction in household income, adversely affected Applicant's financial situation. Whether nearly $74,000 in alleged delinquent debt and probable interest and fees can be attributed from that five-month drop from $140,000 to $54,000 annual household income, however, is questionable. Regardless, Applicant explored resolution of his dilemma with credit counseling and lawyers before attempting to tackle the problem on his own. Since that time, undeniable progress has been made by Applicant in addressing many of the 20 debts at issue in the SOR.

While progress has been made, at least $17,000 of that debt has not so much been resolved as it has been temporarily displaced, to the extent that it was paid by Applicant's employer with anticipation of repayment in the next two years. In addition,

evidence regarding the current status of the nearly $18,000 at issue for SOR allegations ¶¶ 1.g, 1.h, 1.i, 1.n, and 1.s has yet to be validated. The amount to be repaid to Applicant's employer, and any balances yet owed on any other accounts, are to be paid in the future from Applicant's net monthly salary. Applicant currently earns about $130,000 and his wife recently earned only $1,000 in income, less than the approximately $140,000 in household income Applicant had when he first encountered financial difficulty. Without more evidence and information showing what debts are being paid by the employer, how much new debt Applicant will be obligated to repay his employer, and what Applicant's net available income will be following loan-related deductions, it is impossible to discern whether Applicant can suffer and sustain a 24-month long reduction in household income that would lead him into more delinquent debt. This is particularly worrisome given the substantial debt acquired over a five-month period in 2005, and his past inability to satisfy those same debts over the past few years.

Applicant, in citing to relevant Appeal Board case law, argued that the question is not that the Applicant has paid off all of the indebtedness before the security clearance arises, only that they have established a reasonable plan to resolve the debts, and that they have taken significant actions to implement the plan. This is true. However, whether a plan is reasonable can only be assessed when sufficient information is established with regard to the terms and Applicant's ability to adhere to that plan. Without more information detailing all the obligations subsumed into the loan, the full amount of the obligation to be repaid over 24 months, verification that other debts at issue in the SOR and not subject to that loan are resolved, and a more thorough depiction of Applicant's current, post-loan budgetary needs, it is impossible to assess whether the present debt repayment plans are workable and potentially effective.[47] Absent such additional evidence, financial considerations security concerns remain unmitigated.

Guideline E – Personal Conduct

Security concerns arise from matters of personal conduct because "conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information."[48] In addition, "any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process" is of special interest.[49] Here, personal conduct concerns were potentially raised when Applicant failed to identify his delinquent debts and judgments on his security clearance application. If such a failure was deliberate, such omissions would be sufficient to raise Personal Conduct

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[47] In substance, there are two repayment plans. One is the plan executed on Applicant's behalf by his employer. The second is the plan for Applicant's repayment of the loan created by his employer's expenditures.

[48] AG ¶ 15.

[49] *Id.*

Disqualifying Condition AG ¶ 16(a) (deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities). Consequently, the burden shifts to Applicant to mitigate the resultant security concerns.

Applicant credibly testified that he did not intentionally mislead or falsify when he only noted one delinquency on his security clearance application. His explanation was credible, especially since he was in a rush, based his answers on a previously submitted application, and had not checked his credit report. Absent evidence that his omissions were intentional or fraudulent, the disqualifying condition cited must fail. However, if a disqualifying condition did apply, Personal Conduct Mitigating Condition AG ¶ 17(e) (the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress) would apply. Absent evidence of intentional falsity or omission, personal conduct security concerns are mitigated.

Whole Person Concept

Under the whole person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the "whole person" factors. Applicant is a mature, educated, and credible witness who served this country through nine years of military service. He is a devoted husband and father. Applicant is employed by an understanding and generous employer. There, he is a highly regarded employee who works tirelessly, usually at a great distance from his family. Applicant incurred an injury that demanded major surgery in 2004. His wife, a nurse, took leave without pay to care for him during his recovery. He incurred significant debt during the five months he recuperated, during which he depleted his savings and lived on compensation that provided only 60% of his salary. After that five month period, he returned to work at full salary, while his wife returned to work part-time.

In 2005, Applicant sought to address his acquired debt through a credit counseling program, but the program was ineffective. He consulted attorneys who advised him to file for bankruptcy, but Applicant wanted to honor his debts directly. He then proceeded to address his debts on his own, apparently without the aid of formal financial advice. Many debts were addressed, although a substantial amount of his debt was settled for less than he originally owed.

When Applicant appeared at the March 2010 hearing, he provided evidence of an unorchestrated and protracted, but somewhat effective approach to his debts. After

the hearing, he entered into an agreement with his employer. Under that agreement, his company would pay Applicant's delinquent debts. In return, Applicant is to repay any debt incurred by his employer on his behalf. Evidence of the loan and its repayment plan is lacking specificity. While the plan proposed reflects that the loan is interest-free, should be repaid within two years, and designates from what sources Applicant's payments should be derived, it does not enumerate what debts at issue will be paid or reimbursed by the business. The anticipated sum of the loan is projected only as being between approximately $27,000 and 49,800, which poses an exceptionally broad range. Without a fixed or more finite loan amount defined, the ability of Applicant to budget his net income, as reduced through payroll deductions to pay on that loan, is incalculable. It further confounds attempts to judge the plan as reasonable when insufficient terms and sums are offered to assess whether Applicant can adjust to the resultant reduction in net income and still effectively manage his other current obligations. This is an essential consideration given the tremendous debt Applicant previously incurred over only five months on a reduced income. Because of that experience, such information is important in order to gauge his current ability to live within his means while honoring this repayment through payroll deduction. In addition to the above, questions remain as to whether purported payments on other debts were successfully transacted and credited.

There is no issue here regarding Applicant's honesty, loyalty, or industriousness. He has proven himself as a dedicated citizen and a highly valued employee. The burden in these proceedings, however, is placed squarely on the Applicant. The evidence provided is deficient, both in terms of past payments and his financial ability to adhere to the still-undefined plan proposed by his employer.[50] The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that any doubt concerning personnel being considered for access to classified information will be resolved in favor of national security. The "clearly consistent standard" indicates that security clearance determinations should err, if they must, on the side of denials. Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information. In light of these standards and the evidence submitted, I conclude Applicant failed to meet his burden and mitigate financial considerations security concerns. Clearance is denied.

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 – 1.f	For Applicant
Subparagraph 1.g – 1.i	Against Applicant

[50] Applicant's employer's plan is exceptionally lenient with regard to the loan's framework of terms. Whether is is reasonable, however, cannot be discerned without actual numbers, enumerated accounts, and specific dollar sums regarding deductions to be applied toward repayment of the loan.

Subparagraph 1.j – 1.m	For Applicant
Subparagraph 1.n	Against Applicant
Subparagraph 1.o – 1.r	For Applicant
Subparagraph 1.s	Against Applicant
Subparagraph 1.t	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 1.a – 1.c	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant a security clearance. Clearance denied.

ARTHUR E. MARSHALL, JR.
Administrative Judge