



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



In the matter of:)
)
-----) ISCR Case No. 09-04654
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Candace L. Garcia, Esquire, Department Counsel
For Applicant: *Pro se*

December 15, 2010

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

As of February 2010, Applicant owed about \$563 in delinquent medical debt incurred by him and his spouse in 2003 and 2004, \$1,704 on a car loan in collection, and \$709 for a past due credit card account held jointly with his spouse. The loan on his home was past due about \$30,487. He fell behind in the mortgage payments when he and his spouse were both out of work for medical reasons, and they could not afford the increase in his monthly obligation after the loan was modified. He learned in 2010 that the current mortgage holder is not holding him responsible for the debt, and it has been deleted from his credit report. Applicant has been advised to assume the note so that he could keep his home. The unresolved debt is not likely to be a source of financial pressure for Applicant. He has paid off his car loan, settled the delinquent credit card account, and satisfied three of the medical debts. Clearance granted.

Statement of the Case

On February 1, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline

F (Financial Considerations) that provided the basis for its preliminary decision to deny him a security clearance. 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) effective within the Department of Defense as of September 1, 2006.

Applicant responded to the SOR allegations on March 22, 2010, and he requested a hearing before a DOHA administrative judge. On May 11, 2010, 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 Applicant. Due to the nature of his work as a long-distance truck driver, Applicant was unavailable for his hearing until late October or early November 2010. On September 30, 2010, I scheduled a hearing for November 4, 2010.

I convened the hearing as scheduled. Nine Government exhibits (Ex. 1-9) and 13 Applicant exhibits (Ex. A-M) were entered into evidence without objection. Applicant and his spouse also testified, as reflected in a transcript (Tr.) received on November 12, 2010.

At Applicant's request, I held the record open until November 30, 2010, for him to submit additional documentation. On November 16, 2010, Applicant forwarded six exhibits, which were admitted as exhibits N through S without objection.

Findings of Fact

The SOR alleged that as of February 2010 Applicant owed \$563 in medical debt in collection (SOR 1.a–1.e), delinquent consumer credit debts totaling \$2,929 (SOR 1.f, 1.h–1.i), and past due mortgage debt of \$30,487 (SOR 1.g). In his March 2010 Answer, Applicant admitted all the debts except for a \$546 credit card debt identified in SOR 1.i. He subsequently contested his liability for the home mortgage debt on the basis that he was not on the promissory note. After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 44-year-old self-employed truck driver. Since July 2008, he has transported expedited freight throughout the United States, including to military installations, under contract with a major shipping and delivery company. (Ex. 1.) Applicant drives his own tractor-trailer truck (rig), and he is compensated based on the value of the load. For example, if his load pays \$5,500 and his expenses total \$3,000, his pay is \$2,500. Accordingly, his income fluctuates depending on the availability of loads for transport and his expenses to deliver the load. (Tr. 58.) Applicant's spouse rides the truck with him, and she has a security clearance. Without his security clearance, they are unable to deliver sensitive shipments for the U.S. military. (Tr. 58.)

Applicant was married to his first wife from June 1993 to April 1999. (Ex. 1) They had no children, but in 1994 Applicant discovered that he had a son, who was born in 1989. The child's mother obtained a court order requiring Applicant to pay child support at \$80 per week retroactive from the boy's birth. In 2000, Applicant arranged for his state tax

refunds to be applied to his child support. In 2002, his child support obligation increased to \$160 per week. After he was injured in 2003 (see below), Applicant fell behind in his child support payments. (Ex. 2, 4.) He arranged for his federal income tax refunds to be applied to his child support and arrearages. His child support obligation ended in February 2008, and he paid off the arrearage in April 2008. (Ex. 2.)

In February 2000, Applicant married his current wife, and he became the stepfather of her two daughters then 10 and 14 years old. He worked as a truck driver for a succession of companies before going into business for himself in July 2008. From March 2001 to July 2008, he also held a second job as a mechanic for an auto body shop owned by a close friend. (Ex. 1; Tr. 73.)

Around 2002, Applicant and his new spouse contracted to have a new house built on about 15 acres of land given to her by her parents. (Tr. 65-67.) Applicant obtained a construction loan for \$100,000 from a mortgage broker who, unbeknownst to Applicant or his spouse, was apparently involved in criminal activity. (Tr. 64.) After the mortgage lender was jailed, Applicant was extended a loan offer from another lender provided he obtained a cosigner. On September 11, 2003, Applicant's father signed a promissory note, agreeing to pay \$160,200 plus interest over the next 30 years to the lender. (Ex. D.) Applicant testified that he signed separate documents making him jointly liable with his father for the 30-year mortgage (Tr. 27, 33, 64.), and his credit record included that debt. (Ex. 4.) Applicant and his spouse assumed responsibility for paying the \$1,092.85 monthly mortgage since they were living in the home, and the lender accepted their checks. (Ex. D; Tr. 30.)

Applicant's spouse, who had been a state employee since October 21, 2002, was absent from work on approved personal leave for medical reasons from July 18, 2003, until August 6, 2003. She was required to use accrued sick leave and then vacation time. She was unable to return to work when her leave ended, and she requested additional leave of "undetermined" duration. Citing pressing business needs, the state terminated her employment effective August 28, 2003. She was considered to be separated in good standing, and the state indicated it would continue her health insurance coverage through September 30, 2003. Applicant's spouse filed a grievance through the union. After collecting unemployment for about nine months (Tr. 71.), she was reemployed by the state effective May 24, 2004. (Ex. L, M.) Applicant incurred a medical debt of \$208 in August 2003 (likely for his spouse) that was referred for collection due to nonpayment in January 2004 (Ex. 5), when both he and his spouse were out of work.

Applicant was in a dirt bike accident in October 2003. He suffered multiple cervical spine fractures that required stabilization in a rigid cervical collar. He was unable to work for several months while his injuries healed because he could not operate a truck safely. (Ex. G-K.) On February 17, 2004, he was approved to return to light duty, but he did not return to full-time work until six months after his injury. (Ex. K; Tr. 72.) Applicant had medical insurance coverage through his employer, although he was responsible for some minor medical bills. Applicant paid some neurology charges, but he disputed emergency room charges incurred for repeat visits to the emergency room on the same day in October 2003 (SOR 1.d). Medical personnel had failed to treat a deep laceration during his initial

visit. (Ex. G; Tr. 70.) In addition to those debts that went to collections, he incurred medical debts of \$79 in October 2003 (SOR 1.a), \$60 in February 2004 (SOR 1.b), and \$98 (SOR 1.c) in March 2004, that he did not dispute yet did not pay. (Ex. 5-9.)

Applicant and his spouse began to fall behind in the mortgage payments when they were out of work. Around May 2004, Applicant contacted the mortgage lender about modifying the loan on his home to lower the monthly payment. The past due balance was added to the mortgage, and due to an increase in the interest rate, the mortgage loan went from \$160,000 to \$206,851. The monthly payment obligation increased from \$1,092 to about \$1,793. (Ex. 5) He informed the mortgage company that he could not afford the new monthly payment, but at times paid what he could. (Tr. 75.) He also fell behind on a credit card account opened jointly with his spouse, and the account was charged off and placed for collection in July 2004. As of October 2005 the past due balance was \$709 (SOR 1.h). (Ex. 5.)

Around 2006, Applicant suffered an on-the-job injury. He was paid workmen's compensation (Ex. 2; Tr. 69.), but the available information does not show the extent to which his household income was affected. In February 2007, Applicant took out an automobile loan of \$12,475. Monthly payments were \$319.87 per month. (Ex. 4, 5, A.) He made his payments on agreed on terms through October 2008. (Ex. 4, 5.)

In May 2008, Applicant stopped working as a truck driver for a local home heating oil company. For a month or two, he and his spouse had no income apart from his part-time auto repair work for his friend. Applicant decided to go into business for himself. He bought a 2000 model-year tractor-trailer truck in June 2008 through a loan of \$93,425. (Ex. 4.) He and his spouse put almost all of their retirement funds into the truck to meet the defense contractor's standards. (Tr. 92.) Also in June 2008, Applicant paid \$3,000 and submitted paperwork to re-modify the mortgage on his home. He was informed by the lender identified in SOR 1.g not to pay on the loan pending a decision on his request to modify the loan. (Tr. 75.) As of September 2008, the mortgage was reportedly past due 90 days in the amount of \$5,380. (Ex. 4.)

Applicant began long-haul deliveries under a lease agreement with a defense contractor in July 2008. Depending on the loads transported, Applicant's gross income varied from \$30,000 per month to a low of \$5,000 per month. (Ex. 2.) On October 15, 2008, Applicant applied for the security clearance needed to continue to deliver sensitive cargo to the U.S. military. He listed one delinquent debt, the mortgage on his home, which he estimated at \$20,000 past due. (Ex. 1.) In December 2008, mechanical problems with the truck left him with no income for a few weeks and repair costs totaling \$21,941.08. (Ex. F; Tr. 45.) To pay for the repairs, he refinanced the truck in mid-December 2008 through a business loan of \$118,568.77. (Ex. E; Tr. 46.) He paid off the \$96,627.69 balance of his previous loan and the remainder was paid to the truck repairer. (Ex. E.) His monthly payments for the truck increased from \$2,158 to \$2,723. (Ex. 5.)

As of February 2009, Applicant was 30 days past due on his new loan for the truck, \$14,347 past due on the mortgage (SOR 1.g), and \$699 past due on his car loan (SOR

1.f), which was in collection. He had not paid the medical debts identified in SOR 1.a through 1.e or the joint credit card debt in SOR 1.h. Among the adverse information on his credit record was a \$546 charged-off balance owed since September 2002, on a credit card account on which Applicant was an authorized user (SOR 1.i). (Ex. 5.) Applicant submits that the debt was his ex-wife's responsibility on their divorce. (Ex. 2; Tr. 79.) As of the fall of 2008, Equifax was reporting the account as having been opened in September 2001 (Ex. 4-5), which would have been during his current marriage. However, Equifax subsequently dropped the debt from his credit record. (Ex. 6-8). Applicant intends to pay the debt if his liability is proven. As of November 2010, he had not investigated the debt. (Tr. 80.)

Applicant was interviewed by a Government investigator on April 3, 2009, at a truck stop. He estimated his net monthly income at \$10,410 before taxes, personal expenses of \$2,117, trucking business expenses of \$5,241 (primarily fuel and insurance), and debt payments of \$4,462, which included \$1,394 on the mortgage that was past due. Excluding the mortgage, which he was not paying, his estimated expenses exceeded his income by \$16. Applicant added that his daughter lived in the home with her boyfriend, since he and his spouse resided there only two months out of the year. Applicant had not had any contact with the mortgage lender since October 2008, and he was awaiting a decision on the restructuring of his loan. Applicant had paid \$100 every other week since November 2008 toward his delinquent auto loan. Applicant expressed his belief that the credit card debt identified in SOR 1.h had been settled, and that the credit card debt identified in SOR 1.i was his first wife's responsibility on their divorce. Applicant did not recognize the medical debts (SOR 1.a to 1.e). He described his current financial situation as below average due to slow business and the lack of income at times for him and his spouse. (Ex. 2.)

Applicant completed a personal financial statement for DOHA on October 5, 2009. He reported income of \$13,007.60 but it varied each month. He estimated his personal expenses at \$1,960, truck expenses at \$7,195.05 that varied each month, and debt payments totaling \$3,118. He was making his truck and car payments on time, but paying only \$20 per month on the mortgage. Applicant explained that he had a home saver loan that was keeping his home from foreclosure. (Ex. 2.)

In January 2010, the assignee collecting the credit card debt identified in SOR 1.h had offered to settle the debt on receipt of 50% to 60% of the then \$723.95 balance, depending on the payment option selected by Applicant. Applicant paid \$363 to settle the debt on or before July 13, 2010. (Ex. B.) As of May 2010, Applicant's car loan (SOR 1.f) was over \$1,000 past due. He paid off his loan on October 22, 2010. (Ex. A, Q.)

On November 4, 2010, Applicant satisfied the medical debts identified in SOR 1.a, 1.b, and 1.c. He planned to pay the remaining medical debt (SOR 1.d and 1.e, and \$20 from 2007 not alleged) in the next couple of months.¹ (Ex. N, P.)

¹Applicant presented evidence after the hearing showing respective unpaid collection balances of \$140 from 2001 and \$20 from 2007, which were not alleged in the SOR. (Ex. P.) While the \$20 debt is likely a medical co-pay, the nature of the \$140 debt is unclear.

Concerning the mortgage loan, around January 2010, Applicant learned from the mortgage lender that he was not qualified for a loan modification, and that the house was in foreclosure without a sell date. In response to whether he should resume monthly mortgage payments, he was told that the past due balance, which was \$30,487 as of November 2009 (Ex. 8), had to be paid in full for the home to be taken out of foreclosure. (Ex. 3.) Subsequent to that contact, the mortgage lender was acquired by a bank that pursued foreclosure against Applicant, his spouse, and his father. On his return to his home in May 2010, Applicant was served notice of a hearing before a foreclosure mediator scheduled for mid-November 2010.² (Tr. 77.) Applicant contacted the new holder of the mortgage, who refused to discuss restructuring with him because it had no record of him being on the note. (Ex. D; Tr. 26-33.) Applicant understood from the bank that the debt would be removed from his credit record (Ex. C; Tr. 27, 33-34.), and the debt was deleted as of early November 2010. (Ex. R, S.)

As of November 4, 2010, Applicant intended to attend the upcoming mediation hearing and to include him on the loan and remove his father so they do not lose the house. He and his spouse wanted to sell the home to her daughter and daughter's fiancé, who were residing there and paying the utilities. (Tr. 30, 77, 93.) Applicant was willing to lose the house if necessary to save his trucking business (Tr. 63.) and was considering a short sale. (Tr. 95.)

In mid-November 2010, Applicant and his spouse attended the foreclosure mediation session. The mortgagee had authority to agree to a proposed settlement, loan modification, or dismissal. Mediation was not conducted because neither Applicant nor his spouse was on the note and Applicant's father, who was on the promissory note, did not attend. Applicant was advised by the mortgagee to apply to assume the note. Applicant indicated that he would negotiate with the assumptions department. (Ex. O.) Applicant understands that he is not legally bound for the note. As of November 16, 2010, he had not taken any steps to assume the note from his father. (Ex. N.)

Applicant has no active credit card accounts in his name. He is given a fuel card by the defense contractor which is an advance of 45% of the value of the load transported. The advance goes to his operating expenses, including his food, fuel, any blown tires, etc. He has no income other than what remains of the advance after he pays his operating expenses. During his latest absence from the state from sometime in May 2010 until the first of November 2010, Applicant lost 63 days of work due to his truck being flooded out. He had no income during that time and had to have his truck rebuilt. He covered his expenses with funds saved from "some pretty good weeks" delivering for the Government at the end of its fiscal year. (Tr. 87-88.) During lean times when loads were unavailable for transport, Applicant and his spouse had to borrow funds from her daughters and sold some of his possessions that he did not need. (Tr. 89.) During tax year 2009, he and his spouse

² Applicant and his spouse were listed, along with his father, as defendants in the mortgage foreclosure action. (Ex. O.) Applicant testified the bank obtained his and his spouse's names from the deed to the land. (Tr. 28.)

had gross business earnings of \$133,000, but little, if anything, left after paying expenses. (Tr. 91.)

Applicant had to return to his home state in November 2010 to renew his commercial operator's license. His lost income potential is around \$1,500 per day when he is not on the road. (Tr. 90.) He tries to maintain \$700 to \$800 on his fuel card so that he has operation funds to pick up the next load offered to him. (Tr. 109.) As of early November 2010, Applicant and his spouse had around \$2,000 in checking deposits. (Tr. 112.) They estimate they can afford mortgage payments of about \$1,300 per month should they assume the loan on their home. (Tr. 114.) Applicant has received no financial counseling because he cannot afford the cost. (Tr. 98.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant's eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to 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 *a/so* 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, as follows:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case: ¶ 19(a) inability or unwillingness to satisfy debts; and ¶ 19(c) a history of not meeting financial obligations. As of his interview in April 2009, Applicant had not paid about \$563 in delinquent medical debts from 2003 and 2004 that are his legal responsibility. He presented evidence of two other outstanding debts in collection totaling \$160 that were not included in the SOR. He was also jointly liable with his spouse for a credit card debt of \$709 delinquent since at least July 2004, and the mortgage on their home was seriously past due. Concerning the loan, Applicant testified that he and his father signed separate paperwork for the mortgage, and that Applicant subsequently had the loan modified. But the current holder of the note has been unable to produce evidence establishing that Applicant signed a promissory note (the negotiable instrument) securing the mortgage. A recent foreclosure mediation session was not allowed to proceed because, although named as defendants, neither Applicant nor his spouse is on the note. Under the pertinent state’s law, which provides for judicial foreclosure, the mortgagee cannot enforce a debt obligation secured by a mortgage and note without the note.³ Apparently, the bank cannot hold Applicant legally liable for the mortgage debt unless he assumes the note, which he has been advised to do. Nonetheless, Applicant had an ethical obligation to his father, who is on the note, to make the payments on time so as not to negatively affect his father’s credit. Applicant’s handling of that loan raises financial judgment concerns, even if the bank can proceed only against his father at this point. AG ¶¶ 19(a) and 19(c) are established because of Applicant’s record of financial delinquency.

³ See 14 Me. Rev. Stat. §6321, which provides in pertinent part: “The mortgagee shall certify proof of ownership of the mortgage note and produce evidence of the mortgage note, mortgage and all assignments and endorsements of the mortgage note and mortgage.”

Five Financial Considerations mitigating conditions under AG ¶ 20 are potentially applicable:

- (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;
- (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;
- (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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (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.

Applicant disputes his liability for the \$546 credit card debt identified in SOR 1.i on the basis that it was incurred during his previous marriage and became his ex-wife's responsibility on their divorce. As of March 2009, the debt was being reported on his record as opened in September 2001, which would have been during his current marriage. Applicant had not made any attempt to verify the debt as of his November 2010 hearing. But he was also listed as an authorized user of the account. Without evidence that he knowingly incurred the charges on the account, I find AG ¶ 20(e) applies to that debt. As reflected on his credit records, Applicant disputed the \$118 medical debt in SOR 1.d with the hospital. Available medical records substantiate that he had to return to the emergency room to treat a deep laceration following his October 2003 accident. But it is unclear whether the \$118 debt was solely the co-pay for a second visit to the emergency room or it covered medical services and supplies in treating the laceration. AG ¶ 20(e) has not been established as to that debt. As for the legitimacy of the mortgage debt, Applicant was not allowed by the court to enter into mediation with the bank because he is not on the note, and it has been deleted from his credit record. But the bank can proceed against his father on the defaulted note, and as of early November 2010, Applicant intended to assume the note to facilitate sale of the home to his stepdaughter and her fiancé. Given Applicant and his spouse are on the deed to the house, and they assumed responsibility for paying the mortgage, it is difficult to apply AG ¶ 20(e), even if Applicant decides not to assume the loan.

The recency of Applicant's financial problems precludes favorable consideration of AG ¶ 20(a). Aside from the issue of the mortgage, which is over \$30,000 past due, Applicant was behind in his automobile loan \$1,704 as of January 2010, although he since paid off the loan. As of December 2009, he was \$946 behind in his loan for his rig, and had not made any payments on the delinquent credit card account in SOR 1.h, or on his medical debts in collection.

But mitigating condition AG ¶ 20(b) applies in several aspects. The \$208 medical debt in SOR 1.e was incurred in August 2003, when his spouse was on leave for medical reasons. The other medical debts in the SOR are attributable to Applicant's accident in October 2003. Moreover, Applicant was unable to work for six months after his accident. He and his spouse lived off her unemployment compensation, which was apparently not enough to cover all their obligations, including the mortgage. Around May 2004, Applicant sought a re-modification of his mortgage to lower the monthly payment. But once the delinquent balance and interest rates were calculated in the loan, the mortgage went from \$160,000 to \$206,851. His monthly payments increased from \$1,092 to \$1,793. Although his spouse had regained her employment with the state, and Applicant had returned to work as a truck driver for the oil company, they could not afford the mortgage. Clearly, they paid something on the mortgage over the next four years, because the past due balance even now does not approach the \$86,064 in estimated total payments required under the terms of the loan, presuming the monthly payment remained at \$1,783. While they were chronically past due in making payments, the loss of household income from October 2003 to May 2004 put them in a situation from which they were unable to catch up. The credit card delinquency identified in SOR 1.h is also attributable to the loss of household income while they were recuperating from unexpected illness and injury.

As for the car loan identified in SOR 1.f, Applicant made his payments on time through October 2008. Unwanted mechanical problems with his truck led to lost business opportunity for a couple of weeks in December 2008 and \$21,941 in repair costs that he had to pay if he wanted to continue to transport cargo for the defense contractor. To pay for the repairs, he had to refinance the loan on his truck, which increased his monthly payment by \$565, which further strained their finances. Furthermore, the problems with his truck were not limited to these repairs, as this past spring, Applicant lost income due to his truck being flooded. Given the significant negative financial impact of these various factors outside of his control, AG ¶ 20(b) applies, even though he probably could have paid off the smaller medical debts sooner than he did.

Although certainly belated, Applicant's settlement of the credit card debt in SOR 1.h, and his satisfaction of his car loan in SOR 1.f and the medical debts in SOR 1.a, 1.b, and 1.c, qualify as good-faith efforts to resolve his debts under AG ¶ 20(d). Even with respect to the mortgage on his home, Applicant paid \$3,000 to the original lender in June 2008 in connection with an application to restructure his loan. Whereas he acted on the advice of the lender to refrain from further payment on the mortgage pending action on his request to restructure the loan, his non-payment of the loan thereafter is not evidence of disregard or lack of willingness to resolve the debts on his record.

His documented satisfaction of his car loan, three medical debts, and the credit card debt in SOR 1.h provides assurance that he will follow through on his stated intent to resolve his remaining medical debt in the near future. It is less clear when or even how the mortgage debt will be resolved, however. The bank currently holding the mortgage may elect to foreclose on the property if the loan is not brought current. Under that scenario, Applicant and his spouse would lose the home that they built on her land. And the impact of a default on his father's credit could affect family relations. On the other hand, the bank appears willing to work with Applicant to resolve the debt, or it would not have advised him to assume the note. While AG ¶ 20(d) cannot be fully applied in light of the status of the mortgage debt, I do not see Applicant as likely to engage in illegal acts to generate funds to resolve the debt. His first priority is his business, and he is not likely to jeopardize the clearance that he needs by engaging in conduct that is illegal or improper to resolve a debt that as of now he is not legally liable to pay. If he assumes the note, or is adjudged liable for the mortgage debt, he has shown through his attempts to restructure the mortgage, and also through his refinancing of his truck loan when he was faced with a repair bill of \$21,941.08, that he will resort to legal means to resolve it.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of his conduct and all relevant 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.

Applicant has a history of late payments on several financial obligations. While he exercised questionable financial judgment at times, most notably when he told the mortgagee that he would not make any payments on the loan until the monthly payment was reduced, his financial problems are largely attributable to insufficient income rather than to a pervasive unwillingness to pay legitimate claims. Applicant's income varies significantly depending on the loads available for transport, and he has yet to profit from his business. But with the satisfaction of his auto loan in October 2010, his financial obligations have been reduced by \$319.87 per month. Any new debt incurred is in operation of his rig and covered by his fuel card. While he owes a substantial business debt for his rig, he is

making payments on terms agreed on by the lender. He and his spouse appear to be living within their means, in that they are not spending lavishly on consumer items that they do not need or cannot reasonably afford. In viewing his financial situation as a whole, I conclude that Applicant can be counted on to fulfill the fiduciary obligations of a security clearance.

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
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant

Conclusion

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

Elizabeth M. Matchinski
Administrative Judge