



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



In the matter of: )  
)  
) ISCR Case No. 09-07424  
)  
)  
Applicant for Security Clearance )

**Appearances**

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

May 25, 2011

**Decision**

MATCHINSKI, Elizabeth M., Administrative Judge:

In January 2011, Applicant retained legal counsel to file for Chapter 7 bankruptcy. Applicant owes about \$30,000 in delinquent consumer credit debt, not including a \$2,363.95 collection debt for medical treatment for his spouse. He also incurred state and federal tax liabilities totaling \$12,882 for tax years 2004 through 2007. He arranged to repay his federal tax debt at \$75 per month and a timeshare loan debt at \$60 per month starting in 2009, but he has not made any payment on the timeshare debt since May 2010, and he missed four payments to the IRS in 2010. Circumstances beyond his control only partially explain his ongoing financial struggles. Clearance denied.

**Statement of the Case**

On July 20, 2010, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a statement of reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations, that provided the basis for its preliminary decision to deny him eligibility for a security clearance, and to refer the matter to an administrative judge.

DOHA took action 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); Department of Defense Regulation 5200.2-R, *Personnel Security Program* (January 1987) as amended; and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

On August 22, 2010, Applicant answered the SOR allegations and requested a hearing. The case was assigned to me on November 3, 2010, to conduct a hearing and to determine whether it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. On November 15, 2010, I scheduled a hearing for December 16, 2010.

I convened the hearing as scheduled. Seven Government exhibits (Ex. 1-7) and eight Applicant exhibits (Ex. A-H) were admitted into evidence without objection. Applicant and his supervisor also testified, as reflected in a transcript (Tr.) received on December 23, 2010.

At Applicant's request, I held the record open for three weeks, until January 6, 2011, for additional documents. On January 5, 2011, Applicant offered two exhibits, which were marked and entered without objection as Exhibits I and J.

### **Summary of SOR Allegations**

The SOR alleges that as of July 20, 2010, Applicant had an outstanding state tax lien issued against him in March 2009 for \$5,982 (SOR 1.a), and he also owed \$6,900 to the Internal Revenue Service (IRS) (SOR 1.q). In addition, Applicant allegedly owed delinquent consumer credit debt totaling \$28,114 (SOR 1.b-1.p).

### **Findings of Fact**

In his Answer, Applicant denied owing a delinquent hospital debt of \$512 (SOR 1.m), contending that it should have been covered by his medical insurance. He acknowledged that he had not satisfied the state tax debt in SOR 1.a, but the balance should be reduced by more than \$800 because the state seized funds from his bank account. Similarly, he did not dispute an outstanding federal tax debt. However, he was making payments of \$75 per month and his 2009 income tax refund had been applied to reduce the balance from its original \$6,900. He admitted that he owed the debt balances in SOR 1.b, 1.g, 1.h, 1.i, and that he might owe the debts in SOR 1.c-1.e, 1.i-1.k, and 1.o-1.p. Applicant did not dispute that he had incurred a past-due credit card balance with the lender in SOR 1.f. However, he contended that all but \$11,000 of the \$21,161 balance represented fines and fees. Applicant also explained that he had a contract dispute with the telephone company identified in SOR 1.n, and that the original amount was less than the \$814 alleged. Applicant's admissions are accepted and incorporated as findings of fact. After considering the pleadings, exhibits, and transcript, I make the following additional factual findings.

Applicant is a 43-year-old security guard for a federal contractor. He was hired in May 2009, and he has worked at a present assignment since June 2009. (Tr. 16.) He seeks his first security clearance. (Ex. 1; Tr. 28.)

While married to his first wife from June 1995 to October 2001, Applicant worked in sales and then held a succession of trainee positions in the financial investment, mortgage, and real estate appraisal fields. His spouse worked full-time in human resources, and her income steadily increased. Around 1998 or 1999, Applicant believed he had found his "niche" as a real estate appraiser, but he began to have marital problems. Thinking that a change of location would help their relationship, Applicant and his first wife sold the home that they had owned for less than four years, and in January 1999 they moved close to her mother. Applicant and his spouse lived off their savings while seeking employment. Most of the jobs in the area were in local factories at low pay. After six months, they returned to the East Coast and moved in with Applicant's mother. Applicant worked part-time as an appraiser and his spouse supported them from her job as a human resources manager with a start-up company. They built a new home, which they moved into in December 1999. They took out a mortgage of \$116,850. (Ex. 1; 3; 7; C.)

Applicant worked as a part-time residential appraiser only from October 1999 until April 2000, when he started as a technician for a cable television company. Due to the lack of steady hours and low pay, Applicant left the job in October 2000 for a salaried position with benefits as an insurance adjuster. He continued his part-time appraisal job. By June 2001, Applicant and his first wife decided to separate. Applicant and his first wife paid off the mortgage on their marital home, and he bought another home in a different locale, taking on an \$85,950 mortgage. (Ex. 1; 3; 7; C.)

In September 2001, Applicant left his position with the insurance company to pursue full-time appraisal work. In October 2001, Applicant's divorce was final and he began dating his current wife, whom he had met while working for the insurance company. In June 2002 she moved in with him, and they eventually wed in May 2004. From his e-QIP, it appears that they honeymooned in Ireland for ten days. Applicant earned sufficient income from his appraisal work to purchase a vacation home for \$99,900 in April 2003. (Tr. 64.) He took out a first mortgage of \$79,200, to be repaid at \$560 per month, and a second mortgage of \$19,800, to be repaid at \$211 per month. (Ex. 3; 7; C; Tr. 68.) Around July 2003, a decline in the real estate market led to a decrease in his hours and consequently also his income. In August 2004, he opened his own appraisal firm. (Ex. 1; 3; C.) In September 2004, he refinanced the mortgage on the vacation home though a "2/28 term loan," of \$121,500. For the first two years, he had a fixed rate which then reverted to an adjustable rate mortgage (ARM) loan. (Ex. 3; 7; Tr. 68-70.)

Applicant's gross earnings totaled around \$130,000 in 2005. (Ex. 3.) For eight days starting in late April 2005, Applicant and his spouse vacationed in Ireland. (Ex. 1.) In October 2005, they financed the purchase of a timeshare through a loan of \$6,754

(SOR 1.I) with payments at \$141 per month. Also that fall, Applicant and his spouse found a new primary residence in an adjacent state where they hoped to raise a family. One of Applicant's clients offered a fixed-rate mortgage at 9% interest with the prospect of refinancing a few months later to a loan at 7% interest. Applicant accepted the terms, but at closing in late November 2005 he was given a 10.75% ARM. Assured by his client that he would be able to refinance in only a few months, Applicant took out an ARM of \$274,200 toward the house's \$285,000 purchase price. (Ex. 3; 7; C; Tr. 36, 64-67.) Applicant sold his previous residence for around \$149,000 or \$150,000, and received a payout of \$12,000 to \$13,000 from its sale. (Tr. 63.)

Shortly after Applicant and his spouse moved in to their new home, real estate values fell, and the expected equity in the house did not materialize. Applicant was unable to refinance, so his monthly mortgage obligation stayed at about \$2,700 including taxes and insurance. Applicant's taxable income dropped to \$55,571 for tax year 2006. (Ex. B.) Applicant stopped paying the mortgage on their "dream home" after February 2006, and the lender foreclosed on the property in June 2006. (Tr. 36-37.) Applicant owed \$265,000 on the mortgage. (Ex. 3.) The house was subsequently sold by the lender, and Applicant has not been notified that he owes anything on the house. (Tr. 71.) Applicant and his spouse moved into their vacation home, which was some 250 miles away from Applicant's client base. (Ex. 3; C.)

After the birth of their daughter in September 2006, Applicant's spouse decided not to work outside the home. Applicant took the advice of his best client to become involved in the client's mortgage loan business. Applicant moved his family into an apartment in March 2007 near his new job. Three months later, a crisis in the mortgage industry led to little new business for him. (Tr. 36-38.) With the mortgage on the vacation home at around \$1,100 per month, their rent at \$750 per month plus utilities, two car payments totaling \$610 per month, and health insurance costing them \$800 per month, Applicant fell behind in his property tax payments on the vacation home, and he made no payment on the mortgage after August 2007. After a short-sale fell through, the lender foreclosed on the property around October 2008. Applicant owed around \$124,000 on the mortgage at the time, but this house sold as well, and Applicant has not been informed that he owes a balance on the loan. (Ex. 1; 3; 5; C; Tr. 71-72.)

In November 2007, Applicant began working full-time as a casualty adjuster for an insurance company at around \$36,000 per year. (Tr. 38.) He continued to operate his own appraisal business as well, although his taxable income in 2007 totaled only \$40,567 (\$39,458 from his appraisal business and \$4,109 in wages from his new insurance job). (Ex. B.) Applicant found it difficult to maintain his quota in the processing of claims, largely due to his supervisor not allowing him to authorize claim payments in excess of \$50 without her approval. (Ex. 3.) In January 2009, Applicant was terminated for poor performance. (Ex. 1; Tr. 29.) He collected unemployment compensation at \$433 a week (\$8,094 total). (Ex. A; B.) Sometime in early 2009, he sold a boat he owned since 2002 for around \$800. (Tr. 90.)

Around January 2009, Applicant and his spouse learned that they owed delinquent state taxes for tax years 2004 through 2007.<sup>1</sup> (Ex. 3.) Applicant's bank account was debited \$502.28 and applied to their delinquent state tax debt. A withdrawal stop in the amount of \$967.14 was placed against his spouse's bank account in response to a state tax levy. She was informed that if the amount was not paid by February 3, 2009, the balance of her account, up to the levy amount, would be withdrawn and remitted to the state tax authority. In response, Applicant and his spouse filed for temporary relief of their obligation to repay the debt. They provided state revenue officials with income and expense information showing a net negative balance of \$778 per month. On March 3, 2009, the state denied their request for hardship relief for failure to provide three bank statements from their respective banks and a copy of their 2007 federal return. (Ex. A.) On March 9, 2009, the state filed a state tax lien in the amount of \$5,982 (SOR 1.a). (Ex. 4.) They appealed the denial of the hardship request on March 26, 2009, in that that they were not in a position to pay the tax debt because of his unemployment. Applicant indicated that they had missed several payments on a timeshare loan to where the lender was threatening to seize their vehicles in partial payment of \$6,600 owed (SOR 1.l), and he requested that the levies against his and his spouse's bank accounts be lifted. (Ex. A.) Over the next few months, Applicant tried several times to ascertain the status of their hardship request. (Tr. 29-34.) In May 2009, the state denied the request and demanded repayment at \$333 per month. They were not in a position to make those payments. (Ex. 3.)

Applicant was hired by his current employer in May 2009. On May 22, 2009, Applicant completed a Questionnaire for National Security Positions (Ex. 2), on which he disclosed several delinquent debts. On June 11, 2009, Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP). He disclosed the two home foreclosures, and that he owed federal back taxes of \$6,900 for tax year 2004 (SOR 1.q) (Ex. D) in addition to the state tax debt (SOR 1.a). He also listed the debts identified in SOR 1.d, 1.f (at \$18,902), 1.i, 1.k, and 1.l (as reduced to \$4,860 through monthly payments of \$60 since February 2009). Applicant added that he would be making \$20 payments on the debts in SOR 1.d and 1.h starting in June 2009. (Ex. 1.) A check of Applicant's credit on June 25, 2009, revealed that he also owed three past-due medical debts in collection totaling \$243 (SOR 1.e, 1.o, and 1.p), a \$794 telephone debt in collection (SOR 1.n), and a home improvement retail charge account debt of \$1,423 (SOR 1.g).<sup>2</sup> (Ex. 7.) Applicant also owed a \$369 collection debt to the power company from July 2008 (SOR 1.b). (Ex. 6.) Around July 13, 2009, Applicant and his spouse began repaying the IRS \$75 per month. (Ex. 3; D.) Their federal income tax refund from 2009 (listed on his return as \$1,737) was apparently intercepted and also applied to the debt (SOR 1.q). (Ex. B; Answer.)

On September 3, 2009, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM), in part about his unresolved

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<sup>1</sup> Applicant paid less than his tax liability when he filed his federal and state tax returns. (Ex. 3.)

<sup>2</sup> Available credit reports (Ex. 6; 7) show no payment on the home improvement retail charge account after June 2005, when his income reported at its highest.

delinquencies. Applicant acknowledged most of the debts, which he attributed to “the crashing real estate market” rather than to his own negligence or irresponsibility. He indicated that some of his creditors, most notably the credit card lender in SOR 1.f, had attempted to “capitalize on his misfortune” by raising his credit card rate.<sup>3</sup> (Ex. 3.)

Applicant earned \$3,918 from his appraisal business and \$32,170.43 in wages from his federal contractor employment in 2009. (Ex. B.) In February 2009, he began repaying the delinquent timeshare loan at \$60 per month (SOR 1.l<sup>4</sup>), and around July 2009, he began repaying the federal tax delinquency at \$75 a month (SOR 1.q). (Ex. D.)

Applicant drafted a check on January 15, 2010, to satisfy the \$61 telephone debt in SOR 1.k. However, the check was never mailed. (Ex. I.) His only client in his appraisal business had ceased operations, so he lost that income, and his earnings from his security guard job were insufficient to make payments on the delinquencies, including the state tax debt (SOR 1.a). Accounts continued to be placed for collection. In January 2010, a utility provider placed a \$149 debt for collection due to nonpayment since September 2009 (SOR 1.c). A hospital had placed an unpaid balance of \$75 from May 2008 for collection (SOR 1.m). (Ex. 3.) Applicant believes the debt should have been paid by his insurer. (Tr. 80.) He also contests the \$21,161 reported balance of the credit card debt in SOR 1.f. High credit extended to him was only \$11,259. (Ex. 2; 5; 6.) In February 2010, Applicant estimated that he and his spouse had a net monthly remainder of \$471 based on somewhat higher earnings of late. He informed DOHA that they had no savings and were living “paycheck to paycheck.” (Ex. 3.)

In February or March 2010, Applicant sold for \$900 two snowmobiles that he had bought in 2001. He realized only \$550 from the sale because \$350 went to a repairman, who had been holding one of the snowmobiles until Applicant paid the repair bill. (Tr. 88-89.) In May 2010, an unpaid emergency room debt for his spouse of \$2,363.95 (not alleged in SOR) was placed for collection. (Ex. 5; D.) They stopped their \$60 payments on the delinquent timeshare loan because they could no longer afford them. (Tr. 73-74.) Over the next eight months, they missed four of their payments to the IRS. (Ex. D; Tr. 72-73.) They paid nothing toward the state tax debt. (Tr. 78.)

Around November 2010, Applicant began working a second job as a part-time security guard. He started at 20 hours weekly but within a month or so, he was down to ten hours. (Tr. 82, 85.) As of December 2010, Applicant estimated the family’s monthly expenses at \$3,522.43. (Ex. D) His take-home pay from his primary job had averaged around \$3,200 for the last two months. (Ex. E; Tr. 74.) He and his spouse were paying \$291 per month for ten months for their daughter’s preschool tuition.<sup>5</sup> They owed their

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<sup>3</sup> Available credit reports (Ex. 6; 7) indicate Applicant stopped paying on the credit card account in February 2006, when he should have had sufficient funds to make payments.

<sup>4</sup> The amount in the SOR is what was past due rather than the full balance owed.

<sup>5</sup> Applicant’s daughter attended the same preschool during the 2009-10 school year two days a week at a cost of \$230 per month. (Tr. 86-87.)

daughter's pediatrician \$413.28, \$276.28 of which was past due more than 120 days. They were current in their car payment of \$296.78 per month for a 2004 model-year vehicle purchased in October 2010 for \$12,900. (Ex. D; Tr. 76.) They also had a private car loan with a balance around \$2,900 for a vehicle that they bought in April 2008. They were repaying that loan at \$135 per month. (Ex. D; Tr. 79.) They were behind in their electricity bill. They were also one month behind in their \$140 monthly payments for a storage unit. (Ex. D; 87-88.) Applicant's spouse plans to resume working outside the home once their daughter starts kindergarten in the fall of 2011. (Ex. H.)

At his hearing in mid-December 2010, Applicant testified that he had not pursued bankruptcy because he considered it "an easy way out," and he intended to repay his debts. He was waiting for the economy to turnaround. (Tr. 39, 82.) On or before January 4, 2011, Applicant retained legal counsel to file for a Chapter 7 bankruptcy. (Ex. J.) On January 11, 2011, Applicant paid \$40 toward the state tax debt (SOR 1.a). (Ex. I.) He has not had any financial counseling. (Tr. 81.)

Applicant has not allowed his personal financial struggles to negatively affect his work for the federal contractor. Applicant exhibited a high level of maturity and responsibility in carrying out his duties. (Ex. F.) His supervisor considers him to be a model employee and an asset to the company. (Tr. 52.) Applicant's pastor has some insight into Applicant's and his spouse's life situation and he believes Applicant would never do anything to jeopardize the job he needs to support his family. (Ex. G.)

## **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 (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant's eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall arching 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 reasonable, logical, and based on

the evidence of 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 the Applicant may deliberately or inadvertently fail to safeguard sensitive 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 (EO) 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 about finances is set out in AG ¶ 18:

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

When times were good in the mortgage appraisal industry, Applicant apparently gave little thought to saving. Instead he bought a vacation home in April 2003. He vacationed in Europe in April 2005. In October 2005, he purchased an interest in a timeshare with his spouse. In late November 2005, he bought their “dream home.” With mortgage loan payment obligations totaling around \$3,800 per month, Applicant and his spouse were unable to pay all of their debts on time after his income declined from a high of \$130,000 in 2005 to \$55,571 in 2006 and \$40,567 in 2007. Both homes were foreclosed on, and several consumer credit accounts were referred for collection, including the timeshare loan. In addition, because Applicant had underpaid their federal and state income taxes starting in 2004, they incurred tax liabilities of \$6,900 to the IRS and at least \$5,982 to the state. As of July 2010, Applicant was legally liable for about



\$40,000 in past-due debt,<sup>6</sup> which is more than his annual net income from his federal contractor employment. Disqualifying conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply. Moreover, AG ¶ 19(e), “consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis,” must be considered. There is little evidence of recent non-essential purchases similar to the two snowmobiles that he had bought in 2001 or the boat acquired in 2002. Nonetheless, Applicant continues to struggle to pay the family’s expenses. After May 2010 he paid nothing on the delinquent timeshare loan and missed four payments on the IRS tax debt. He was behind in his electric utility and storage unit payments as of November 2010.

Concerning potential factors in mitigation, Applicant’s financial problems are too extensive and recent to apply 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.” 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,” applies in part. Applicant had no control over the real estate slowdown that led to the decrease in home prices and his inability to refinance their dream home in early 2006. Similarly, the crisis in the mortgage industry was unanticipated, and it had a negative impact on his income in 2007. His spouse’s \$2,363 medical debt from November 2009 implicates AG ¶ 20(b) as well. However, AG ¶ 20(b) does not explain why he underpaid their income taxes, especially for tax years 2004 and 2005. Applicant apparently sent in only partial payments of taxes owed when he filed their returns. His gross earnings totaled around \$130,000 in 2005, when the taxes for 2004 would have been due. He vacationed in Ireland for eight days in April 2005, presumably at his expense. It is difficult to fully apply AG ¶ 20(b) when a vacation took priority over paying their taxes. Applicant also exercised questionable financial judgment when he agreed to the 10.75% ARM for their “dream home” in November 2005, particularly given his experience in real estate appraisal. While his income decreased to \$55,571 in 2006, he was no longer paying on the mortgage for their dream home as of March 2006, so he should have had the funds available to pay his taxes for 2005 when they came due in April 2006. More recently, he and his spouse have chosen to send their daughter to private preschool for the past two years. While it is understandable that they would want the best education for their child, it is difficult to justify the \$2,910 cost for ten months of preschool at three days a week when his spouse is not working outside the home, they are struggling to meet their monthly bills, and they have an unresolved state tax lien against them. Applicant has not always handled his personal finances responsibly.

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<sup>6</sup> This assumes that the full \$1,737 in expected federal income tax refund for 2009 was applied to the IRS debt and that he paid \$75 per month since July 2009.

After his hearing, Applicant retained an attorney to file a Chapter 7 bankruptcy, which is a legal means to address burdensome debt. As of the close of the record, he had yet to file his petition. The DOHA Appeal Board has indicated that a bankruptcy is insufficient to fully implicate AG ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”<sup>7</sup> Under a Chapter 7 discharge, Applicant’s creditors would not be paid while Applicant had benefited from the credit extended to him. Payments made by Applicant toward his delinquent federal income tax and timeshare loan debts since 2009 are insufficient to fully establish AG ¶ 20(d) where he failed to keep up with those payments in 2010.

Under current bankruptcy law, Applicant is required to obtain financial counseling, and a discharge could implicate AG ¶ 20(c), “the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control. But assuming Applicant follows through with the bankruptcy and is relieved of his legal obligation to repay most, if not all of his debts,<sup>8</sup> it would be premature to conclude that his financial problems are behind him, given his inability to remain current on his living expenses.

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<sup>7</sup> The Appeal Board has previously explained what constitutes a “good-faith” effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of Financial Considerations Mitigating Condition 6, an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant’s debts. The Directive does not define the term ‘good-faith.’ However, the Board has indicated that the concept of good-faith ‘requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.’ Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of Financial Considerations Mitigating Condition 6 [currently AG ¶ 20(d)].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001)).

<sup>8</sup> Under Title 11, Section 523 of the United States Code, a bankruptcy discharge does not discharge the debt from any debt for a tax or a customs duty specified in section 507(a)(8). In Section 507(a)(8), tax debts have eighth priority when it comes to paying claims in bankruptcy. That section provides in pertinent part:

- (8) Eighth, allowed unsecured claims of governmental units, only to the extent that such claims are for—
  - (A) a tax on or measured by income or gross receipts for a taxable year ending on or before the date of the filing of the petition—
    - (i) for which a return, if required, is last due, including extensions, after three years before the date of the filing of the petition.

Although the state issued a tax lien in March 2009, the taxes were assessed for tax years 2004 through 2007. (Ex. 3.) The return for 2007 would have been due April 15, 2008. Taxes owed for 2007 would not appear to be dischargeable in bankruptcy if Applicant filed a petition before April 15, 2011. Whether or not the taxes are discharged is not outcome determinative of whether Applicant has fully mitigated the financial concerns.

Concerning disputed debts, such as the medical debt in SOR 1.m, Applicant did not present any documents that prove the debt should have been covered by his medical insurer. Nonetheless, the record evidence is conflicting as to the balance of the debt. Applicant listed the debt on his e-QIP as a disputed \$512 balance. As of January 2010, Trans Union reported three medical debts in collection placed by the hospital, none of which had a \$512 balance. One of the three accounts had a high balance of \$512 but only \$75 was due on the account. As of December 2010, Applicant had yet to pay even the \$75, however. Applicant also challenges the validity of the \$21,161 balance reportedly owed on the credit card account in SOR 1.f, contending that the lender “capitalize[d] on his misfortune” by raising his credit card rate. Even if I accept that Applicant charged only up to \$11,259 on the account, and that the remainder represents fees and interest, I cannot apply 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.” Applicant knowingly stopped paying on a sizeable credit card debt.

### **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 relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(a).<sup>9</sup> Applicant is considered by his supervisor to be an asset to their employer, and by all accounts, he appears to be a good father and husband. He recently took on a second job to support his family. His pastor knows him to be ethical, and Applicant has been candid with the Government about his financial struggles. Although negatively affected by the economic downturn, which hit the mortgage and real estate sectors particularly hard, Applicant also failed to manage his resources responsibly at times. He did not set aside sufficient funds to pay his income taxes when they came due, even when his earnings exceeded \$50,000 annually. He bought a new house located nowhere near his client base with an ARM that he knew was high at the time. He stopped paying on the loan and also on his credit card with the lender identified in SOR 1.f in February 2006. Despite full-time employment in November 2007, he made no effort to repay that credit card debt. Newer vehicle loans and preschool tuition costs

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<sup>9</sup> The factors under AG ¶ 2(a) are:

- (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.

have put him in a position where he now has to resort to bankruptcy to address his debt burden.

In November 2010, Applicant began working a second job. His spouse intends to return to work in September 2011, once their daughter is in kindergarten. Applicant could be a good candidate for a security clearance in the future if his financial situation stabilizes and he is able to show a sustained record of sound financial decisions. However, unmitigated financial concerns preclude me at this time from concluding that it is clearly consistent with the national interest to grant Applicant access to classified information.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

#### **Paragraph 1, Guideline F: AGAINST APPLICANT**

Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant

### **Conclusion**

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

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Elizabeth M. Matchinski  
Administrative Judge