



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



In the matter of:)	
)	
)	ISCR Case No. 10-00885
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: David F. Hayes, Esquire, Department Counsel
For Applicant: *Pro se*

09/18/2012

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Available credit information shows that Applicant owes more than \$40,000 in past-due debt, including five unpaid civil judgments. In August 2012, he proposed to repay \$15,892 of the undisputed debt under a debt management plan, but it is too soon to conclude that his financial problems are behind him. Applicant's failure to disclose judgment debts on his security clearance application and his repeated driving while his license has been suspended or revoked raise serious doubts about his judgment and reliability. Clearance denied.

Statement of the Case

On May 7, 2012, 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, and Guideline E, Personal Conduct, explaining why it was unable to find it clearly consistent with the national interest to grant him security clearance eligibility. DOHA took the 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); and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant submitted an undated Answer to the SOR allegations, and he requested a hearing. On July 19, 2012, the case was assigned to me to conduct a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On July 24, 2012, I scheduled a hearing for August 17, 2012.

I convened the hearing as scheduled. Eight Government exhibits (GEs 2-8) were admitted. I withheld ruling on proposed GE 1, Applicant's July 28, 2010 Electronic Questionnaire for Investigations Processing (e-QIP) pending post-hearing submission of a missing page from the document. Nine Applicant exhibits (AEs A-I) were admitted, and Applicant testified, as reflected in a transcript (Tr.) received on August 22, 2012. At Applicant's request, I held the record open, initially until August 31, 2012, for additional exhibits.

On August 20, 2012, the Government submitted missing page 42 of the e-QIP. A complete version of the e-QIP was then admitted into evidence as GE 1 without objection. On August 27, 2012, Applicant submitted through Department Counsel a letter from the state tax authority, to which the Government did not object. Accordingly, the document was admitted as AE J. On August 31, 2012, I extended the deadline one week for further evidence, as Applicant was awaiting proof that his account had been debited by a debt management company. Applicant submitted no additional documents, and the record closed on September 7, 2012.

Summary of SOR Allegations

The SOR alleges under Guideline F that as of May 7, 2012, Applicant owed \$46,142.95 in delinquent debt: judgments totaling \$14,173 (SOR 1.a-1.d, 1.bb-1.ee); medical debts of \$2,365 (SOR 1.e-1.g, 1.k, 1.m-1.w, 1.y); utility and cable debts totaling \$1,165 (SOR 1.i. 1.l, 1.x); \$21,372.95 in auto loan debt in collection (SOR 1.h, 1.z, 1.aa); and a \$7,067 collection balance to a former landlord (SOR 1.j), who obtained the judgments in SOR 1.a-1.d. Under Guideline E, Applicant allegedly falsified his July 2010 e-QIP by responding "No" to whether he had any judgments entered against him in the last seven years and whether he had any debts placed for collection in the last seven years, and not disclosing several of his delinquent debts (SOR 2.a). Also, Applicant was charged, and in some cases fined, for operating a vehicle without a valid license in August 2006, March 2009, May 2010, and March 2011 (SOR 2.b-2.e). For being a habitual offender, his driver's license was suspended on July 18, 2011 (SOR 2.f).

Applicant admitted all but nine of the debts. He denied the \$1,298 balance of the repossession debt in SOR 1.h, indicating he owed less than \$500; the \$448 electric utility debt (SOR 1.i) in that it had been paid; the \$7,067 collection debt allegedly placed by his former landlord (SOR 1.j); the \$268 cable debt because he had returned the cable box

(SOR 1.x); the \$9,054 car repossession debt because of the car dealer's refusal to honor the warranty on the vehicle (SOR 1.aa); the judgments of \$1,872 (SOR 1.bb), \$220 (SOR 1.cc), and \$173 (SOR 1.dd) in that they had been paid; and the \$6,242 judgment awarded a finance company (SOR 1.ee). As for the Guideline E allegations, Applicant admitted that he had failed to list several debts on his e-QIP, but he denied the omission was deliberate. He explained that he did not know about some of the debts and others were beyond the seven-year scope of the e-QIP. Applicant admitted the driver's license violations.

Findings of Fact

Applicant's admissions to the debts in SOR 1.a-1.g, 1.k-1.w, and 1.y-1.z, and to the driver's license violations in SOR 2.b-2.f, are accepted and incorporated as findings of fact. After considering the pleadings, exhibits, and transcript, I make the following additional findings of fact.

Applicant is a 41-year-old telecommunications technician, who has worked for his current employer, a defense contractor, since June 2006. Applicant seeks a secret clearance, having had a clearance denied around February 2009 by DOHA for failing to timely provide requested documentation about his finances during a previous adjudication of his security clearance eligibility. (GE 1; Tr. 57-59.)

Applicant served honorably as an electronics technician in the U.S. military from March 1989 to December 1996. (AE G; Tr. 53.) He held a secret security clearance for his military duties until July 1996, when it was upgraded to top secret. (Tr. 53-56.) In April 1998, he and his first wife divorced after almost five years of marriage. In March 2000, Applicant married his current spouse. She has four children, two of whom are still living with them. (GE 1; Tr. 48-49.) The youngest child just started her second year of college. (Tr. 49-50.) Applicant and his spouse are covering \$1,600 of her tuition for this semester. (Tr. 52.) The father of Applicant's stepchildren owes delinquent child support around \$30,000. Applicant's spouse receives about \$100 per month in child support arrearage. (Tr. 101-102.)

Due to a change in permanent duty station while he was on active duty, Applicant had to terminate a tenancy prematurely. In May 1996, the landlord was awarded a \$173 judgment against Applicant (SOR 1.dd). He believes he paid the debt, although the record lacks corroborating documentation. After Applicant was discharged from the military, he worked in pizza delivery and then for a bank until sometime in 2001. For the next year, Applicant held odd jobs without benefits until December 2002, when he began employment as a telecommunications engineer for a healthcare company. (Tr. 63-64.) In November 2004, he was fired for failing to return to work on time and not reporting his absence properly. Applicant was unemployed from December 2004 to February 2005. From February 2005 to August 2005, he took temporary assignments, including in customer service for pharmaceutical representatives. In August 2005, Applicant began employment as a cable installer for a cable television company, but the work was not steady, and he still had no medical benefits. (GE 1; Tr. 60, 64.)

Applicant struggled financially, largely due to insufficient employment income after he left the military. His spouse worked part time. (GE 2.) He stopped paying on a \$12,000 car loan taken out in July 1997, and his vehicle was repossessed. In November 2000, the creditor was awarded a \$1,872 judgment against him (SOR 1.bb). Applicant had a second vehicle involuntarily repossessed around June 2001 for failure to make his \$295 monthly loan payments, and in January 2002, the financier obtained a \$6,242 judgment against him (SOR 1.ee). (Tr. 100.) In May 2003, Applicant bought a car for around \$7,000. He financed \$5,862 of the cost, taking on loan payments of \$326 per month (SOR 1.h). After Applicant lost his job in 2004, he fell behind on his car payments and on the rent for his mobile home. In January 2005, the landlord was awarded judgments of \$1,617 (SOR 1.a) and \$1,003 (SOR 1.c). In March 2005, the mobile home lessor was awarded additional judgments of \$83 (SOR 1.b) and \$2,963 (SOR 1.d).¹ The judgments went unpaid, and in May 2006, the landlord placed a \$4,358 balance for collection (SOR 1.j). Applicant's car was repossessed due to nonpayment around April 2006 (SOR 1.h). Applicant received collection notices informing him that he owed a deficiency balance of \$1,298, which he ignored. (GE 2.) In December 2003, his cable provider referred a \$216 balance for collection (SOR 1.x). In June 2005, his electric utility company placed a \$449 delinquent balance for collection (SOR 1.i, possibly duplicated in SOR 1.l).² (GEs 4-7.)

Medical expenses went unpaid because of the financial needs of his family and lack of insurance. Between May 2004 and June 2005, three medical debts, of \$270 (SOR 1.e), \$170 (SOR 1.f), and \$64 (SOR 1.g), were sent for collection. (GEs 3-6; Tr. 71.)

In June 2006, Applicant relocated his family for his present job. (GE 1.) He incurred about \$3,200 in out-of-pocket costs to move their personal property. (GE 2.) Applicant signed up for a health savings account through his employer. He did not understand how it worked, and he paid little attention to explanation of benefit forms received. (Tr. 46-47.) In May 2007, four medical debts, past due in the aggregate amount of \$348, were placed with one assignee (SOR 1.n-1.q). Applicant was diagnosed in 2005 with a medical condition requiring ongoing treatment with prescription medication. In June 2008, the same assignee received five more delinquent medical debts totaling \$320 (SOR 1.r-1.u, 1.w). In July 2008, another \$133 in past-due medical debt was placed with the assignee (SOR 1.v). Other

¹Applicant contests the judgment amounts because he recalls falling behind for approximately three months when his monthly rental was either \$500 or \$550. He testified that he did not damage the premises. (Tr. 32, 65-66.) In September 2010, Applicant told an investigator for the Office of Personnel Management (OPM) that the judge dismissed the landlord's case, and he was not ordered to make any payment to the landlord. (GE 2.)

²As of September 29, 2005, Applicant reportedly had two outstanding electric utility services debts in collection, of \$564 placed in August 2004 and of \$449 placed in June 2005 by the same creditor but under different account numbers. (GE 4.) As of October 2011, Equifax was reporting a \$448 collection balance with the assignee in SOR 1.i as of January 2006 (last activity April 2005), and a \$449 collection balance placed with the assignee in SOR 1.l in August 2008 with last activity in August 2004. (GE 6.) Applicant listed two \$500 electric utility debts on a September 2011 debt repayment plan, but he now denies the debt in SOR 1.i on the basis that it had been paid before he moved in June 2006. The assignee in SOR 1.l may well be the current holder of the debt in SOR 1.i. While Applicant again listed two separate utility debts of \$500 each in his latest prospective debt management plan (AE I), he disputed the debt in SOR 1.i at his hearing, not having researched the debt. (Tr. 76.) The evidence is inconclusive as to whether SOR 1.i and 1.l are the same debt.

assignees have been holding medical debts of \$830 since September 2007 (SOR 1.m) and of \$155 since October 2007 (SOR 1.k). (GE 5.)

In conjunction with adjudicating Applicant's security clearance eligibility, DOHA sent Applicant financial interrogatories in 2008. Applicant promised some debt consolidation paperwork that he then did not submit. He had a copy of his credit report showing some adverse accounts, but he took no action to investigate the validity of the debts. (Tr. 71.) After being notified by DOHA in November 2008 that he was in default, Applicant asked for more time to submit information about his past-due medical debts and proof of payments. In February 2009, DOHA denied Applicant security clearance eligibility. (GE 1; Tr. 58-60, 66-67.) Applicant was advised that he had to wait at least a year to reapply for his clearance. He did little to address his outstanding delinquencies over the next few years. (GEs 2, 5, 6.) He was focused on trying to "get [his] car straight [and] getting [his] household situated." In retrospect, Applicant now realizes he did not work as hard on resolving his debts as he should have. (Tr. 68.)

In January or February 2010, Applicant bought a used car. He took out a loan of \$12,842, which he was to repay at \$63 a week. He made a few payments before the engine blew. When the dealer refused to repair the car for free, Applicant decided to stop his payments. In May 2010, an \$11,659 loan balance was referred for collection (SOR 1.z). (GEs 2, 5.) In March 2010, the state tax authority obtained a \$190 judgment against Applicant (not alleged in SOR). He paid the debt and the tax lien was released in May 2011. (GE 8.) In July 2010, a construction company obtained a \$220 small claims judgment (SOR 1.cc) (GE 8) that Applicant then paid. (AE B.) He made no payments toward a \$75 medical debt placed for collection in July 2010 (SOR 1.y). (GE 5.) Also, in July 2010, Applicant bought another used car, taking on a loan of \$8,222, to be repaid at \$296 per month. After only a week or so, this engine also blew. Told that he would have to replace the engine at his expense under the vehicle's warranty, Applicant voluntarily surrendered the car, and he made no payments on the loan. As of January 2011, his loan had a past-due balance of \$9,054 (SOR 1.aa). (GE 6; Tr. 35-37.) Applicant is not being pursued for collection. (Tr. 37-38.) Applicant intends to dispute the debt with the credit reporting agencies. (Tr. 38.)

On July 28, 2010, Applicant executed an e-QIP in reapplication of his security clearance (GE 2.) He responded "No" to the financial record inquiries except for 26.b, "Have you had any possessions or property voluntarily or involuntarily repossessed or foreclosed?" When prompted to add details, Applicant indicated that he paid \$800 to recover a car repossessed in November 2004 by the lender in SOR 1.h. Also, Applicant indicated that he had bills or debts turned over to a collection agency. He listed a medical debt of \$1,428. (GE 1.)

As of August 17, 2010, the credit bureaus were reporting as an outstanding delinquency a \$190 tax lien. His former landlord was reportedly owed four judgments (SOR 1.a-1.d) and a separate collection debt of \$4,865 (SOR 1.j). Applicant disputes the collection debt because his rent was not that high. Also, Applicant reportedly owed several medical debts in collection (SOR 1.e-1.g, 1.k, 1.m, 1.n-w, 1.y) totaling \$2,365 as well as

some past-due utility and cable debts (SOR 1.i, 1.x) not disclosed on his e-QIP. (GE 5.) Applicant denies any intent to conceal known indebtedness when he completed his e-QIP. (Tr. 88.) In his Answer to the SOR, Applicant indicated that he did not know about some debts and others were beyond the seven-year scope of the inquiries.

On September 22, 2010, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM), primarily about an operating without a license charge in 2010 and the negative credit information on his record. Applicant disclosed that he had been cited and fined several times in his previous state of residence for various traffic violations, and that his license was suspended, apparently without his knowledge. After moving to his present locale, he was stopped for speeding in 2006. A check of his operator's license revealed the suspension, and he was cited for operating without a license. He was arrested after he failed to appear in court, and he was ordered to take a defensive driving class to regain his license. Then, in May 2010, Applicant was with his spouse in their car when she fell ill. He agreed to drive home and was pulled over. He was fined for operating without a license. Applicant admitted to the OPM interviewer that he had not paid the fine because he did not have the funds. (GEs 2, 9.)

Concerning his debts, Applicant speculated that the tax lien may be for personal income taxes owed for 2008 when he had claimed "one too many" deductions. He had forgotten about the debt when he completed his e-QIP. Applicant did not agree with the debt balances claimed by his former landlord. He did not recognize some of the medical debts (SOR 1.e-1.g, 1.k, 1.m, 1.y), but he admitted knowing about the medical debts in SOR 1.n-1.w that he incurred after June 2006. Applicant indicated that he made payments of about \$30 in response to contacts from the collection agency. As for the vehicle loan debts in SOR 1.h and 1.z, Applicant admitted he had received collection notices in the past. He indicated he would attempt to negotiate payments of the car loan debt in SOR 1.h. He did not intend to pay the automobile loan in SOR 1.z because the car was defective. Applicant attributed his failure to disclose some debts on his e-QIP to the fact that he did not have a good handle on his finances. He thought he provided what was required. On his current annual salary of \$52,000 and his spouse's \$7.00 hourly wage from her part-time job in retail, Applicant was just getting by financially. He was able to pay their rent and utility bills and planned to address his old debt when he could afford to do so. (GE 2.)

On December 22, 2010, Applicant was re-interviewed about his finances. He had made only minimal attempts to repay his creditors and had not sought any credit counseling. Applicant did not dispute the debt balances of the judgments awarded his former landlord or of the other accounts on his credit record. Applicant also volunteered that he had knowingly driven while his license was suspended. (GE 2.)

In March 2011, Applicant was again cited for operating a vehicle while his license was suspended or revoked. He pleaded guilty on May 16, 2011, and was fined \$250 plus surcharges and assessments for a total of \$360. In July 2011, he was assessed a \$50 late fee for failure to pay his fine on time. He paid \$50 on August 1, 2011, and \$310 on September 15, 2011. On June 29, 2011, Applicant was notified that he was considered a habitual offender and that his right to operate a motor vehicle was revoked for three years

effective July 18, 2011.³ (GE 9.) Applicant maintains that he is eligible to regain his license, since it has been one year after the revocation, although he would still be considered a habitual offender subject to revocation for any further incident. (Tr. 92.)

In response to a request from DOHA for documentation verifying payments and the current status of his debts, Applicant and his spouse entered into a debt management plan on September 12, 2011, listing total debt of \$10,603 owed to six creditors: \$6,674 to his judgment creditor in SOR 1.a-1.d; \$1,298 for the repossessed car in SOR 1.h; \$1,000 in past-due electric utility debt to his previous power company; and \$830 (SOR 1.m) and \$801 (SOR 1.n-1.w) in past-due medical debt. Under an estimated payment plan, Applicant and his spouse were expected to pay \$271.21 per month for 30 months after an initial \$299 legal evaluation fee. (GE 2.) Applicant provided a personal financial statement estimating a net monthly remainder of \$597, which did not include the planned payment to the debt consolidation company. (GE 3.)

On May 7, 2012, DOHA issued a SOR to Applicant alleging \$46,142.95 in delinquent debt. On receipt of the SOR, Applicant began to inquire into his delinquencies, including the judgments in SOR 1.bb and 1.dd, which he believed he had satisfied years ago. The creditors identified in SOR 1.bb and 1.dd had no record of amounts owed. (AE A; Tr. 83-85.) Applicant tried without success to reach the collection agency awarded a \$6,242 judgment for a vehicle repossessed around June 2001 (SOR 1.ee). He intends to have the debt removed from his credit record. Applicant disputed the amount of the collection debt owed his former landlord at the mobile home park, questioning how he could owe \$7,067 (SOR 1.j) in addition to the four judgments (SOR 1.a-1.d). (Tr. 76-77.) As of August 16, 2012, the creditor was still in the process of validating the debt. (AE A.) If his former landlord cannot prove his liability, Applicant intends to have the debt removed from his credit record. (Tr. 77.)

Applicant allowed his September 2011 debt management plan to lapse without making any payments. (Tr. 68, 70.) At his hearing, he presented a prospective debt management plan dated August 16, 2012, under which he proposed to pay \$314.65 per month for 36 months to repay \$15,892 in total debt: \$504 in medical debt to the assignee in SOR 1.e-1.g; \$1,298 for the repossessed vehicle in SOR 1.h; \$500 each on the power company debts in SOR 1.i and 1.l; \$830 for the medical debt in SOR 1.m; \$601 to the agency collecting the medical debts in SOR 1.n-1.w; and \$11,659 for the repossessed vehicle in SOR 1.z. After checking with his former cable provider, Applicant learned that he still owes about \$103 after he returned the cable box. He claims that he added it to his debt repayment plan (Tr. 80), although it was not listed on the proposed schedule of enrolled debts. (AE I.) Applicant prepared a financial budget showing joint net household income of \$4,247 and expenses of \$2,990, not including the \$314.65 proposed debt payment. (AE I.) Applicant testified on August 17, 2012, that he had arranged to have the payment automatically deducted from his account (Tr. 69), although the authorization to debit his bank account in AE I is unsigned. As of the close of the record on September 7, 2012,

³The SOR alleges that Applicant was eligible to regain his operating privileges on July 18, 2012 (SOR 2.f). However, the notice of revocation clearly indicates that he cannot petition for restoration of his license for three years. His eligibility date is July 18, 2014. (GE 9.)

Applicant had not presented any evidence that he had paid the \$317.85 enrollment fee or his first payment under the plan. Available records show the state tax authority recently billed Applicant for past-due state taxes (balance not shown) for tax year 2006. Applicant had satisfied the debt as of August 15, 2012. (AE J.)

Applicant's spouse works part time, four hours a day, in a supermarket's maintenance department. Applicant has only about \$50 in savings. (Tr. 94-95.) He has no credit card debt, but he is currently paying a furniture and home appliance rental company for a washing machine and furniture. (Tr. 96-97.) Applicant is relying on overtime pay to cover his share of his stepdaughter's college tuition and books. (Tr. 98.)

Applicant has been ethical and dependable in carrying out his job duties. (AEs D-F.) A work leader attested to Applicant having had "issues," but also having been honest "about what they are and what caused them." (AE C.) Applicant's supervisor for the past six years is located at corporate headquarters. He commented that a high level of trust is required between Applicant and the company due to the nature of Applicant's work and Applicant's remote location. This supervisor considers Applicant to be a valuable member of the team, and he recommends him "with high conviction and without reservation." (AE E.) He rated Applicant's job performance as "highly effective" in all categories in 2011. (AE H.)

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 overall 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concerns for Financial Considerations are set out in AG ¶ 18:

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

Applicant’s history of financial delinquency establishes two disqualifying conditions under Guideline F: AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.” A former landlord obtained a \$173 judgment against him in May 1996 (SOR 1.dd). A mobile home lessor obtained four judgments totaling \$5,666 in 2005 (SOR 1.a-1.d). Applicant left his previous locale in 2006 owing at least \$449 to the power company (SOR 1.l). He may well have satisfied the utility debt in SOR 1.i before he moved, although he placed two delinquent utility balances of \$500 each on his August 2012 debt management plan. His former cable television provider placed a \$268 debt for collection (SOR 1.x). He owes around \$130 after being credited for return of the cable box. Between 2005 and 2008, undisputed medical debts totaling \$2,365 (SOR 1.e-1.g, 1.k, 1.m-1.w, 1.y) were referred for collection. A local construction company obtained a \$220 judgment against him in July 2010 (SOR 1.cc).

The evidence also shows that Applicant defaulted on five automobile loans in the last 12 years (SOR 1.h, 1.z, 1.aa, 1.bb, 1.ee). Applicant is no longer challenging the \$1,298 balance on the auto loan in SOR 1.h. This auto loan debt and the \$11,659 updated balance of SOR 1.z were included in an August 2012 proposed debt management plan.

Applicant intends to have the \$6,242 auto loan debt in SOR 1. ee removed from his credit record because he has been unable to verify the debt. Yet, he acknowledges that he defaulted on the loan payments (Tr. 100), and available judgment records confirm the award of the judgment. (GE 7.) As for the judgment in SOR 1. bb, Applicant has consistently maintained that he paid it years ago. While he presented no documentation confirming payment, the creditor no longer has a record of the debt (AE A), and by August 2010, it was no longer on his credit record. In contrast, the auto loan debt in SOR 1. aa, for a car bought in July 2010, is still on his credit record with a balance owed of \$9,054 as of January 2011. Applicant does not intend to pay the debt because the engine blew, and it should have been covered under the warranty. Applicant's evidence falls short of disproving his liability for at least some of the debt, but there has apparently been no effort to collect it following a voluntary repossession.

Applicant disputes the \$7,067 debt (SOR 1. j) as an additional collection balance owed the mobile home lessor beyond the judgments entered in 2005. Applicant's August 2010 credit report shows that a debt of \$4,358 was placed for collection in May 2006. As of July 2006, the collection agency reported a balance of \$4,865. Probably due to interest, the assignee reported an increased balance of \$7,067 as of October 2011. (GE 6.) Possibly, Applicant's former landlord pursued collection outside of the court system after Applicant failed to pay the judgments. Yet, the evidence is inconclusive as to whether the balance in SOR 1. j is merely an updated aggregate balance of the unpaid judgments instead of an additional balance.

Concerning the potentially mitigating conditions, AG ¶ 20(a), "the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment," cannot reasonably apply, even assuming the questionable legitimacy of the disputed collection debts in SOR 1. j and SOR 1. aa, and his apparent satisfaction of three judgments (SOR 1. bb-1. dd). Five civil judgments totaling \$11,908 have not been resolved. He owes at least \$449 in long past-due electric utility debt, \$130 to his old cable provider, \$2,365 in medical debts, and \$1,298 in deficiency debt on a defaulted auto loan (SOR 1. h).

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," has limited applicability. Applicant had to terminate his lease prematurely on an apartment (SOR 1. dd) because of a change in his military assignment, which was a factor outside of his control. Applicant stopped paying on the car loans in SOR 1. bb and 1. ee because of insufficient income. Some of the medical debts were incurred when Applicant was unemployed or had no insurance coverage. He fell behind on his rent on the mobile home after he lost his job in 2004. He supported his stepchildren with minimal child support paid by the children's father. Yet, several of the debts were incurred more recently, during his current employment. He attributes the medical debts in SOR 1. n-1. 1 and 1. y to not understanding how a health savings account worked. However, AG ¶ 20(b) does not mitigate delinquencies incurred due to irresponsibility or to neglect.

Applicant was asked by DOHA in 2008 about his efforts to address his delinquencies. His clearance was denied or revoked in February 2009 for failure to provide requested financial record information. He had received collection notices for the auto loans in SOR 1.h and 1.z, which he ignored. He waited for his account with the construction company in SOR 1.cc to go to judgment in July 2010 before he paid it. In September 2011, he provided DOHA with a debt management plan to resolve six debts, including the judgments to the mobile home lessor and the car loan in SOR 1.h. It is difficult to find that he acted responsibly when he then failed to follow through with payments under the plan.

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,” and AG ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” must be considered. AE B confirms that the judgment in SOR 1.cc had been paid, and Applicant apparently satisfied the judgments in SOR 1.bb and 1.dd some time ago. Applicant’s very recent efforts to verify his debts and to resolve \$15,892 of his delinquent debt through a new debt management plan are also viewed favorably. Yet, it would be premature to mitigate the financial concerns under AG ¶ 20(c) or AG ¶ 20(d) without a track record of demonstrated debt payments. The record was held open until September 7, 2012, to provide proof of at least his first payment under the plan. He submitted evidence that a state tax debt has been resolved (AE J) but nothing to confirm that his debt management plan has proceeded beyond the proposal stage.

Applicant met his burden of establishing 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,” with respect to the construction company’s judgment (SOR 1.cc). Applicant’s claimed payment of the judgment debts in SOR 1.bb and 1.dd is satisfied in that the creditors do not report any outstanding liability. AG ¶ 20(e) would also be implicated if the utility services debt in SOR 1.l is a duplicate of SOR 1.i, or the \$7,067 collection debt is an updated balance of his debt to the mobile home lessor, but the evidence is inconclusive. His inclusion of two delinquent power company debts in his recent debt repayment proposal undercuts his case for application of AG ¶ 20(e) to SOR 1.i (or in the alternative SOR 1.l). The collection debt in SOR 1.j was still on his credit report as a separate debt as of October 2011. Applicant understands that he should have been more proactive in addressing his delinquent debt, but it is not enough to minimize the financial security concerns.

Guideline E, Personal Conduct

The security concerns about personal conduct are set out in AG ¶ 15:

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. Of special interest is any failure to provide truthful and candid

answers during the security clearance process or any other failure to cooperate with the security clearance process.

Applicant disclosed only two debts on his July 2010 e-QIP, a \$1,428 medical debt and the vehicle repossession by the lender in SOR 1.h. He indicated that he “paid \$800 to get [his] car back.” Applicant may not have realized the extent of his medical debt. He did not recognize the medical debts in SOR 1.e through 1.g during his September 2010 interview with the OPM investigator, and he believed the electric utility debt in SOR 1.i had been paid. As for the judgments awarded the mobile home lessor, his former landlord, Applicant admitted to the investigator that he went before a judge, but that he was not ordered to pay anything. His account is difficult to reconcile with the judgment awards. As to the omission of the judgment debts in SOR 1.a-1.d, the Government established its case with respect to 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.

Applicant told the OPM investigator that the lender identified in SOR 1.h repossessed his car, sold it at auction, and notified him of a deficiency balance. To the extent that his recounting of the debt is inconsistent with the information reported on his e-QIP, it undermines his credibility with regard to his denials of intentional misrepresentation. Also, Applicant had no difficulty recalling the auto loan debt in SOR 1.z during his interview. He told the investigator that after that vehicle was repossessed earlier in 2010, he received notices about the debt, to which he chose not to respond. Applicant did not mention the debt on his e-QIP, although the omission of that debt was not alleged.

Furthermore, Applicant unquestionably exercised poor judgment within Guideline E when he drove while his operator’s license was suspended or revoked (SOR 2.b-2.f). AG ¶ 16(d) is also implicated:

Credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:

(3) a pattern of dishonesty or rule violations.

None of the mitigating conditions are fully satisfied. Given Applicant’s denials of intentional omission, mitigation is not appropriate under AG ¶ 17(a), “the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being

confronted with the facts,” or AG ¶ 17(d), “the individual acknowledges the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.” Misrepresentation or deliberate omission of material facts from a security clearance application raises significant doubts about whether an individual can be counted on to fulfill the fiduciary obligations of a security clearance without regard to self-interest.

Moreover, Applicant was caught driving without a valid license as recently as March 2011, and his license is still suspended. While he maintains that he is eligible to regain his license, he has not completed the requirements. Although there is no evidence that he is currently driving without a license, he is still considered a habitual offender. It is too soon to apply either AG ¶ 17(d) or AG ¶ 17 (c), “the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment.” The personal conduct concerns have not been adequately mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(a).⁴

Applicant is seriously in debt, not due to credit card abuse or extravagant spending, but rather to past unemployment, medically necessary care, and apparent bad luck with used cars. His ability to cover his financial obligations has been strained because of the cost of raising four stepchildren with little to no financial help from the children’s father. At the same time, he has an obligation to his creditors to make a good-faith effort to address his debts. Nine of the 16 medical debts in collection are for less than \$100. Applicant has made no payments on those debts despite knowing as far back as 2008 that his financial record was of concern to DOHA. His very recent proposal to address his debts through a debt management plan is a positive step in reform, but he failed to follow through on a similar plan in 2011. Concerns about Applicant’s judgment also persist because of his lack of candor about his debts on his e-QIP. Given the number of delinquent accounts involved, it is understandable that Applicant may not recall the specifics of some debts. However, he knew that his financial problems were more extensive than \$1,428 in medical debt and a car loan that he falsely claimed he redeemed. Applicant also raised doubts about his

⁴ The factors under AG ¶ 2(a) are as follows:

- (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.

willingness to comply with rules and regulations by repeatedly driving without a valid operator's license after suspension or revocation. By all accounts, Applicant has been a valuable contributor in his current defense contractor job, but his job performance is not sufficient to overcome the security concerns raised by his personal irresponsibility.

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.aa: Against Applicant

 Subparagraph 1.bb-1.dd: For Applicant

 Subparagraph 1.ee: Against Applicant

Paragraph 2, Guideline E: AGAINST APPLICANT

 Subparagraph 2.a-2.f: Against Applicant

Conclusion

In light of all of the circumstances presented by 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.

Elizabeth M. Matchinski
Administrative Judge