DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 10-01359
	)	
	)	
Applicant for Security Clearance	)	

Appearances

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

June 10, 2011

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

In March 2009 Applicant and his second wife filed a joint Chapter 13 bankruptcy petition. They listed among unsecured priority claims a $1,282.90 child support debt owed by him to his first wife that has been satisfied through monthly payments to the bankruptcy trustee. Non-priority unsecured claims totaled $143,536.56 and included $23,723.71 for his military reenlistment bonus that is not being repaid through the bankruptcy plan. It is too soon to conclude that his financial problems are behind him, given his liability for the military bonus is likely to survive the bankruptcy, and he and his spouse are in divorce proceedings that have already been shown to adversely affect his finances. Clearance denied.

Statement of the Case

On August 25, 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, which provided the basis for its preliminary decision to revoke his eligibility for a security clearance, and to refer the matter to an

administrative judge. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); 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 September 9, 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 continued eligibility for a security clearance. On November 15, 2010, I scheduled a hearing for December 16, 2010.

I convened the hearing as scheduled. Eight Government exhibits (Ex. 1-8) and 14 Applicant exhibits (Ex. A-N) were admitted into evidence without objection, and Applicant testified, as reflected in a transcript (Tr.) received on December 23, 2010.

Procedural Rulings

On May 18, 2011, I reopened the record to clarify the date of Applicant's reenlistment, which was relevant to determining whether the debt in SOR 1.b is likely to survive a Chapter 13 bankruptcy discharge. Applicant was also given the opportunity to update the record concerning the progress of his bankruptcy and divorce proceedings. On May 20, 2011, Applicant timely offered eight potential exhibits. Along with his forwarding correspondence, which was marked as Exhibit O, the documents were admitted without objection as Exhibits P through W.

In rebuttal to the new exhibits, Department Counsel submitted on June 6, 2011, a record of nonjudicial punishment proceedings. The document is admissible as an official record of Applicant's military service and relevant to the issue of the reenlistment bonus. Accordingly, the document was marked and admitted as Exhibit 9.

Summary of SOR Allegations

The SOR alleges that as of August 25, 2010, Applicant owed collection debt of $200 for child support (SOR 1.a) and $18,264 to the Department of Defense (SOR 1.b). Applicant was also alleged to have filed a Chapter 13 bankruptcy in March 2009, which was still pending as of August 25, 2010 (SOR 1.c).

Findings of Fact

In his Answer, Applicant denied that he owed back child support. The debt was incurred because of a retroactive increase in his child support payment starting in 2009, and it was paid off through his bankruptcy in June 2010. Applicant admitted that he owed around $18,264 to the Department of Defense because he chose to separate

from the U.S. military in 2005. Since the Government was notified of his bankruptcy and filed no claim, he cannot be pursued for the debt. As for his bankruptcy, Applicant cited the approval of his plan and payments made to the trustee as evidence it was not pending. After considering the pleadings, exhibits, and transcript, I make the following factual findings.

Applicant is a 38-year-old systems administrator for a defense contractor. He assumed that position in October 2010 after working as an industrial security specialist for the company since commencing his employment in November 2005. Applicant has held a top-secret security clearance since 1993. (Tr. 79.)

Applicant served at the enlisted ranks in the U.S. military from June 1993 to August 2005. (Ex. P.) He was married to his first wife from August 1991 to October 2001. They had two children, a daughter born in June 1996 and a son born in November 1997, for whom Applicant was ordered to pay child support in their divorce. In June 2002 Applicant married his current spouse. She had a two-year-old son and a one-year-old daughter from a previous relationship. (Ex. 1.) Child support payments from her ex-husband were sporadic, and she had medical issues that led her not to seek employment. (Ex. 1; Tr. 38)

At the rank of staff sergeant, Applicant reenlisted in the U.S. military on June 19, 2003, agreeing to serve for four years and 17 months in return for a four-year re-enlistment bonus of around $32,000. Applicant was advised of, and agreed to, conditions that might terminate his continued entitlement to unpaid bonus installments, and cause a portion of advance bonus payments to be recouped or terminated. (Ex. Q.) He received half up-front with the rest to be paid to him in annual increments. (Tr. 70.)

In September 2003 Applicant received nonjudicial punishment for off-duty assaults of his spouse between July 2002 and August 2003. He was ordered to forfeit $912 pay per month for two months and to perform 30 days of extra duty. A reduction in grade was suspended through March 1, 2004, to be remitted without further action. Applicant acknowledged at that time that he understood that the military may be entitled to recoup a portion of the bonus money he received if he separated before completing his active duty service obligation. (Ex. 9.)

In April 2005 Applicant decided to separate early ("Palace Chase") from the military. (Ex. R; Tr. 69.) He was misinformed by military personnel that he would not have to repay his enlistment bonus. After his discharge on August 15, 2005 (Ex. P, R.), Applicant learned that he had to refund that portion of the enlistment bonus covering the enlistment time he did not serve. Applicant appealed the decision several times into early 2006 without success. (Tr. 46, 70.) He then made $50 or $100 payments on the debt when he could afford to do so, and repayment was also deferred for up to six months based on hardship. (Tr. 47.) Around August 2008 a debt balance of $18,264 was referred for collection. (Ex. 7.)

Between April 2006 and February 2008 Applicant's spouse took out student loan debt in both her and Applicant's names for her education. Although deferred, the loans totaled around $49,000 as of March 2009, presumably due to accumulating interest. (Ex. 2, 3, 7; Tr. 66.) In November 2007 Applicant's spouse opened a high-interest cash loan account in Applicant's name to pay for Christmas gifts. (Ex. 2, 3; Tr. 65.) High credit on the account was $5,075 with monthly repayment at $294 for seven years. (Ex. 7.) In May 2008 Applicant and his spouse financed the purchase of two new cars through six-year loans of $21,470 and $21,124. Applicant planned on replacing his vehicle for one with better gas mileage, but his spouse wanted a new car also. He and his spouse each applied for a loan in their own names with the other as cosigner. Applicant and his spouse made their monthly car payments of $417 for his car and $410 for her car on time. (Ex. 7; Tr. 60.)

On April 28, 2008, Applicant completed an Electronic Questionnaire for Investigations Processing to renew his top-secret clearance. (Ex. 1.) In 2008 Applicant learned that his ex-wife was pursuing through the court a significant increase in his monthly child support. Despite annual income of $64,880 from his first job, $461.70 from part-time employment, and $11,460 in veteran's disability pay (Ex. 2, K), Applicant could not easily afford the increase. His spouse worked in a succession of jobs early in 2008, earning about $5,531 total, before she started with a bank. She earned about $19,345 in that job. (Ex. K.) While looking into his finances, Applicant discovered that his current spouse had apparently opened some accounts with him as a cosigner and that some debts were not being paid. (Tr. 37, 50-51.) He took over handling the family's finances. (Tr. 78.) Compounding their financial stress, the father of Applicant's stepchildren stopped paying child support.[1] (Tr. 50.) Feeling he had no alternative to bankruptcy, Applicant consulted with an attorney in September or October 2008 about a possible bankruptcy filing. Based on legal advice, Applicant stopped paying on his debts pending the bankruptcy, except for the car loans, which he continued to pay on time. (Ex. 2, 3, 7, M, N; Tr. 47.) These debts included a line of credit he had held since December 2004, on which he owed around $14,615; $305 still owed for a computer he bought in March 2005; a credit card debt of $8,594; a joint cash loan of $2,572; and some joint credit card debts that were "maxed out." (Ex. 2, 3, 7, K; Tr. 58, 63-64.) Despite their mounting delinquencies, Applicant took on a $6,695 student loan debt of his own in November 2008. (Ex. 3, 7, K; Tr. 66.)

On January 26, 2009, Applicant was ordered to pay child support at $224.93 per week, to rise to $250.46 per week when his son turned 12 in November 2009. (Ex. L.) In March 2009, Applicant and his spouse filed a joint Chapter 13 bankruptcy petition, listing unsecured priority claims of $1,845.05, consisting of past-due child support of $1,292.90 and guardian ad litem fees totaling $552.15. Of the $143,536.56 in unsecured non-priority claims listed on Schedule F, $60,337.15 was for student loans and $23,723.71 was for the enlistment bonus. (Ex. 2, K.) Applicant's spouse had quit her job and received only $200 per month in child support. Based on their expenses,

[1]Applicant and his spouse reported on their joint Chapter 13 bankruptcy petition that she received $11,787.34 in child support in 2007 but only $7,354.93 in 2008. (Ex. K.)

they reported $100 in discretionary monthly income. On April 10, 2009, they proposed a Chapter 13 plan under which they would pay $100 per month for 36 months starting April 24, 2009, and would remit to the trustee any annual tax refunds in excess of $1,200. Applicant's child support arrearage, the guardian ad litem fees, and the Chapter 13 trustee's fees, were to be paid in full under the plan. The unsecured creditors with approved claims were each to be paid a prorated amount at 4.43% of the approved claim. Applicant and his spouse were to continue paying their car loans outside of the bankruptcy. (Ex. 2, 3, K.) The plan was approved on May 15, 2009. The Department of Defense filed no claim for the enlistment bonus. However, approved student loan debts, including non-dischargeable student loan debts of $34,844, were to be paid through the bankruptcy at 4.43%. (Ex. K.)

On November 2, 2009, Applicant was interviewed about his finances by an authorized investigator for the Office of Personnel Management (OPM). Applicant discussed the bankruptcy, which was scheduled to be "paid off" in 2012. As for the enlistment bonus, Applicant explained that it was not being paid through the bankruptcy and he indicated he planned to pay the debt when he is able to do so. His spouse had no earned income, but she was being paid $717 per month in child support from her ex-husband. Estimated monthly expense and debt payments should have given them $402 in discretionary income each month. Yet Applicant reported no assets other than $100 in a savings account. (Ex. 3.)

Applicant and his spouse received credit counseling as required for the bankruptcy filing. Applicant paid $100 per month to the bankruptcy trustee as required under the plan through at least May 9, 2011. (Ex. W.) On April 26, 2010, his and his spouse's federal income tax refund of $3,438 for 2009 was turned over to the bankruptcy trustee. (Ex. 3, A, K.)

Applicant's spouse looked at the bankruptcy as an opportunity to start spending anew, and disagreements over money led to a marital separation in April 2010. She filed for divorce. (Tr. 58, 77-78.) Applicant continued to make timely payments on both car loans. (Ex. 4-7, U, V; Tr. 37.) In July 2010, Applicant was ordered to pay $300 per month for five months in temporary alimony to his spouse. (Tr. 56, 58.) At a hearing in January 2011 her request for additional alimony was denied. However, Applicant was still obligated to make the monthly payments on the vehicle in her possession pending final dissolution of their marriage. (Ex. S; Tr. 53, 60-61.) As of May 2011 the balance of each car loan was around $13,000. (Ex. U, V.) On May 18, 2011, Applicant and his ex-wife entered into a partial permanent stipulation agreement, which they requested be incorporated into their final divorce decree. Under the stipulated agreement, Applicant and his soon-to-be ex-wife agreed to be solely and individually responsible for all consumer credit card, medical, or other debts in their respective names. They agreed to let the court determine repayment liability for her student loans and for the $100 monthly payment to the bankruptcy trustee. (Ex. T.) Applicant has paid between $6,000 and $8,000 in legal costs related to the divorce proceedings. (Tr. 71.) As of December 2010 he owed about $1,000 to his divorce attorney. (Tr. 71-72.) He carries veterinary insurance for his two dogs at $69 per month. (Tr. 56.)

Applicant has not discussed the enlistment bonus debt with the bankruptcy trustee. (Tr. 45.) His bankruptcy lawyer informed him that since the Department of Defense did not respond to the bankruptcy there was "nothing [he] could do." Applicant believes the debt is dischargeable in the bankruptcy, but he does not know for certain. (Tr. 73.) He understands from his lawyer that he cannot make any payments to creditors other than what was provided for under the bankruptcy plan. (Tr. 37, 47-48.) If the debt is not discharged, Applicant intends to make payments on it. (Tr. 48, 75.) After he pays his bills, he has about $400 remaining each month for groceries and miscellaneous expenses. (Tr. 57.) He no longer uses any personal credit cards. (Tr. 76.)

Applicant has not allowed his personal financial problems to negatively affect his work for the defense contractor. Applicant shared with his supervisor that he made some bad financial decisions that led to a bankruptcy, and he kept him informed of the bankruptcy's progress. Applicant's supervisor and his coworkers do not believe that he is a risk to national security. Applicant had been dependable and conscientious in fulfilling his work responsibilities. (Ex. E-I.)

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 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.

Despite his annual salary of almost $65,000 from his defense contractor employment and an additional $11,460 in veteran's disability benefits, Applicant and his spouse were clearly financially overextended in 2008. They owed consumer credit card or loan debt of more than $52,000, in addition to $18,723.71 to the DoD for his enlistment bonus, and about $42,500 for their cars. When faced with an increase in his court-ordered child support, they had to resort to bankruptcy because they could not afford to keep paying on all their credit obligations. Potentially disqualifying conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts," 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," and AG 19(c), "a history of not meeting financial obligations," apply.

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 limited part. The increase in his child support obligation, which apparently was applied retroactively, put unexpected stress on Applicant's budget. Applicant also had no control over the amount of child support his spouse received from her ex-husband. Applicant's spouse opened some accounts with him as a cosigner without his knowledge, but he also ran up some debt (e.g., $14,615 on a line of credit and $8,594 on a credit card). Applicant's repayment of the reenlistment bonus was sporadic even before the bankruptcy. (Tr. 57.) He indulged his spouse and took on $827 in car payments for two new vehicles in May 2008 when he had not satisfied the reenlistment bonus. Then, after he decided to file for bankruptcy, and he and his spouse stopped repaying all but their car loans, Applicant took on his own student loan debt in November 2008. He has not always handled his personal financial obligations responsibly.

Applicant's Chapter 13 bankruptcy filing is a legal means to address burdensome debt where the court and trustee agree on a plan to repay his debts. The DOHA Appeal Board has indicated that even a Chapter 13 wage-earner plan is insufficient to fully implicate AG ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."[2] Most of Applicant's and his spouse's unsecured non-priority debts are being paid only at 4.43% of the approved balance. The DoD is recouping nothing of the reenlistment bonus in the bankruptcy, albeit presumably because the Government did not file a claim. Furthermore, repayment of a small prorated amount through Chapter 13 is not entitled to the same weight in mitigation than had Applicant contacted his creditors and established a record of timely repayments.

Applicant's bankruptcy filing, especially where he has made 24 of the 36 payments required under the plan, could nonetheless 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." He paid off the child support delinquency identified in SOR 1.a. However, as already noted, the sizeable enlistment bonus identified in SOR 1.b is not being repaid. Applicant was led to understand from his bankruptcy attorney that he can only make payments to the trustee in accord with his plan, and that since the DoD failed to assert its claim during the

[2]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 [currently AG ¶20(d)], 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.

(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)).

bankruptcy proceedings, there is nothing he can do to resolve the debt. Department Counsel provided general information about bankruptcy discharge in Exhibit 8, which indicates that debts for most government-funded or guaranteed educational loans or benefit overpayments are not dischargeable. Pertinent federal statutes were not provided for my review, but they were consulted in an effort to ascertain whether Applicant's obligation to repay the enlistment bonus is likely to survive the bankruptcy.

Title 11, Section 1328 of the United States Code pertinent to a Chapter 13 bankruptcy, provides that as soon as practicable after completion by the debtor of all payments under the plan, the court is to grant a discharge of all debts provided for by the plan or disallowed except for certain debts statutorily exempt from discharge. The obligation to repay educational benefit overpayments or loans made, insured, or guaranteed by a governmental unit, is not dischargeable in bankruptcy, unless failure to discharge would work a hardship on the debtor and debtor's dependents. *See* 11 U.S.C. § 523(a)(8). The obligation to refund that percentage of his reenlistment bonus that represents the unexpired part of the additional obligated service is not an educational loan of the type contemplated in 11 U.S.C. §523(a)(8).

Section 523(a)(7) of the United States Code specifically excepts from discharge "a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss, other than a tax penalty. . . imposed with respect to a transaction or event that occurred before three years before the date of the filing of the petition." As to whether the debt may be considered a forfeiture or penalty for failure to complete his obligated enlistment, and non-dischargeable on that basis, the event triggering the obligation would have been his premature separation from the military in August 2005, although available credit reports show the debt was incurred (i.e., matured) in December 2005. (Ex. 6; 7.) Clearly, the DoD had a valid, pre-petition claim against Applicant, and Applicant listed the debt on his Schedule F. Since the DoD had notice and did not respond, Applicant seemingly would not be legally responsible for the debt in the event of a discharge unless it is considered a forfeiture.

However, since October 2000, federal law has required repayment of retention bonuses for failure to complete the term of enlistment for which a bonus was paid, even in the case of bankruptcy, if the bankruptcy discharge was entered less than five years after the termination of the enlistment agreement.[3] The current law on this issue is

[3] 37 U.S.C. §323, effective October 2000, provided in pertinent part:

> (a) Retention Bonus Authorized.—An officer or enlisted member of the armed forces who is serving on active duty and is qualified in a designated critical military skill may be paid a retention bonus as provided in this section if----
> (2) in the case of an enlisted member, the member reenlists or voluntarily extends the member's enlistment for a period of at least one year.
>
> (g) Repayment of bonus.—If an officer who has entered into a written agreement under subsection (a) fails to complete the total period of active duty specified in the agreement, or an enlisted member who voluntarily or because of misconduct does not complete the term of enlistment for which a bonus was paid under this section, the Secretary of

promulgated in Section 373 of Title 37 of the United States Code, which specifically addresses repayment of unearned portions of bonuses, incentive pay, or similar benefits. This statute, effective as of January 2008, provides in pertinent part:

> (a) Repayment and termination. Except as provided in subsection (b),[4] a member of the uniformed services who is paid a bonus, incentive pay, or similar benefit, the receipt of which is contingent upon the member's satisfaction of certain services or eligibility requirements, shall repay to the United States any unearned portion of the bonus, incentive pay, or similar benefit if the member fails to satisfy such service or eligibility requirement, and the member may not receive any unpaid amounts of the bonus, incentive pay, or similar benefit after the member fails to satisfy such service or eligibility requirement.
>
> (c) Effect of bankruptcy. An obligation to repay the United States under this section is, for all purposes, a debt owed the United States. A discharge in bankruptcy under title 11 does not discharge a person from such debt if the discharge order is entered less than five years after—
> (1) the date of the termination of the agreement or contract on which the debt is based; or
> (2) in the absence of such an agreement or contract, the date of the termination of the service on which the debt is based.[5]

Applicant has made enough timely payments to the bankruptcy trustee for me to conclude that he is likely to continue with the plan through discharge. If Applicant makes all his scheduled payments under the plan, he will be entitled to a Chapter 13 bankruptcy discharge around April 2012. Applicant separated from the U.S. military in August 2005, after over 12 years on active duty. He testified that he received the bonus on his reenlistment in 2002, and that he decided to separate early after serving 2.5 to 3

> Defense, and the Secretary of Transportation with respect to members of the Coast Guard when it is not operating as a service in the Navy, may require the member to repay the United States, on a pro rata basis and to the extent that the Secretary determines conditions and circumstances warrant, all sums paid under this section.
>
> (2) An obligation to repay the United States imposed under paragraph (1) is for all purposes a debt owed to the United States.
>
> (3) A discharge in bankruptcy under title 11 that is entered less than 5 years after the termination of a written agreement entered into under subsection (a) does not discharge the member from a debt arising under paragraph (2).

[4] 37 U.S.C. §373(b) provides for exceptions to the general requirement to repay any unearned portion of the bonus, including special rules for deceased service members or those with a combat-related disability. Although Applicant receives a 50% veteran's disability benefit, there is no evidence that it was combat-related.

[5]This federal law is implemented within DoD by regulation, DoD Financial Management Regulation (DoD 7000.14-R), Volume 7A, Military Pay Policy and Procedures—Active Duty and Reserve Pay.

years of the 4 years required. (Tr. 69-70.) However, post-hearing submissions (Ex. P, Q) confirm that he reenlisted on June 19, 2003, and received a bonus based on four years of additional service time. The agreement or contract would ordinarily terminate on the fulfillment of the enlistment term. So, under current law, the operative date for determining whether his enlistment bonus debt is dischargeable in bankruptcy would be five years after June 18, 2007, the end date covered by his enlistment bonus and not his separation date of August 15, 2005. So he could well owe $23,723.71, if not more, to the DoD after the bankruptcy.

Applicant testified credibly that he will repay the enlistment debt if it survives the bankruptcy. However, it is unclear whether he will have the means to repay that debt in the foreseeable future. The termination of temporary alimony in January 2011 freed up $300 per month in funds, but he also owed his divorce attorney $1,000. According to the partial permanent stipulation agreement of May 18, 2011, he and his spouse agreed that she will receive no alimony from him upon their divorce, and that they would be solely and individually responsible for all consumer credit card, medical, or other debts which stand in their respective names. However, repayment of Applicant's spouse's student loan debt was yet to be determined by the court. (Ex. T.) Applicant is listed as a cosigner on the loans. Given that Applicant did not consent to some of the loans, the judge overseeing the divorce may make Applicant's ex-wife solely responsible for repaying the student loan debt that is not dischargeable, but that remains to be seen. He also has his student loan debt that is currently in deferment but will have to be repaid. At this juncture, it would be premature to fully apply AG ¶ 20(c), even though Applicant's timely payments to the bankruptcy trustee and on the car loans are viewed favorably.

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).[6] Applicant testified that he relied to his detriment on advice that he would not have to repay any of his reenlistment bonus if he separated before completing his military service obligation. However, when he accepted the reenlistment bonus, he consented to the withholding from his pay, or any other money due him, to satisfy the unearned portion of his reenlistment bonus. He knew as of early 2006 that the DoD was

[6]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.

seeking recoupment of around $18,264 in government funds overpaid to him because he did not complete his enlistment term. His payments on the debt were sporadic at best, and he continued to take on new debt (most notably the new cars) when that debt was going unpaid. He also exercised financial irresponsibility in not properly monitoring his and his spouse's spending habits, which led to them being financially overextended.

In his favor, Applicant continued to be a dedicated employee for a defense contractor while experiencing financial and marital problems at home. He has taken a credible step through a Chapter 13 bankruptcy to resolve most of his outstanding debts. Yet his liability for the enlistment bonus may well survive the bankruptcy. His neglect of this obligation at times between 2006 and September 2008, when he decided to file for bankruptcy, was clearly inconsistent with his obligations as a defense contractor employee with a top-secret clearance and as a veteran drawing disability pay from the military. As of his hearing in December 2010, he had not raised the issue of that debt with the bankruptcy trustee. It is unclear whether his pending divorce will help or further hinder his financial situation. The financial concerns are not sufficiently mitigated.

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:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	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.

Elizabeth M. Matchinski
Administrative Judge