DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 10-04054
	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Caroline H. Jeffreys, Esquire, Department Counsel
For Applicant: *Pro se*

August 16, 2011

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant and his spouse began having financial difficulties around 2002. He took on a high interest rate mortgage while employed as a part-time consultant after their then four-year-old daughter was diagnosed with cancer. They were granted a financial fresh start through a Chapter 7 bankruptcy discharge in August 2004, but Applicant then underpaid his federal and state income taxes for several years. Their debt is being resolved through a Chapter 13 bankruptcy filed in May 2010, in which they have paid the trustee $835.35 per month since June 2010. However, the financial judgment concerns are not fully mitigated. Clearance denied.

Statement of the Case

On November 10, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline F, Financial Considerations, which provided the basis for its preliminary decision to revoke his security clearance. DOHA acted 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.

On November 30, 2010, Applicant responded to the SOR and indicated that he wanted a decision on the written record without a hearing. Applicant subsequently elected a hearing (Tr. 11), and on March 25, 2011, the case was assigned to me to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for him. On March 30, 2011, I scheduled a hearing for April 28, 2011.

I convened the hearing as scheduled. Eight Government exhibits (GE 1-8) and seven Applicant exhibits (AE A-G) were admitted without objection. Applicant and his bankruptcy trustee testified, as reflected in a transcript (Tr.) received on May 9, 2011.

Summary of SOR Allegations

The SOR alleges under Guideline F, Financial Considerations, that as of November 10, 2010, Applicant owed delinquent federal taxes of $12,069 (SOR 1.a) and $16,751 (SOR 1.c); past-due state taxes of $2,512 (SOR 1.b) and $1,141 (SOR 1.c); a $100 medical debt in collection (SOR 1.e); two past-due debts to a single lender of $2,420 (SOR 1.f) and $697 (SOR 1.g); a late balance of $2,287 on an automobile loan (SOR 1.h); a past-due debt of $219 (SOR 1.i); a $4,306 delinquent credit card balance (SOR 1.j); and $24,739 in mortgage delinquency (SOR 1.k). Applicant was also alleged to have filed for Chapter 13 bankruptcy in May 2010 (SOR 1.i) after having been granted a Chapter 7 bankruptcy discharge in August 2004 (SOR 1.m).

Findings of Fact

Applicant admitted the SOR allegations except for the debt in SOR 1.i, while denying that the indebtedness indicated poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. He acknowledged making some poor financial decisions in the past, but his outstanding debt would be paid in five years through his Chapter 13 bankruptcy payments. His admissions are incorporated as findings of fact, and the evidence substantiates SOR 1.i. After considering the pleadings, exhibits, and transcript, I make the following additional findings of fact.

Applicant is a 48-year-old senior acquisition specialist, who has worked on the same U.S. military base in state X since 1981, for the first four years on active duty and then for a succession of defense contractor employers. (Tr. 30-31.) He has worked for his present employer since March 2008. Applicant was initially granted his Secret clearance around October 1981 while he was in the U.S. military. (GE 1.)

Applicant married his spouse in October 1992. They have two children: a son born in December 1993 and a daughter born in March 1997. His spouse has a 23-year-old son from a previous relationship. He was raised in Applicant's home from age four (GE 1), and he currently serves in the U.S. military. (Tr. 29.)

In 2002, Applicant's and his spouse's daughter was diagnosed with cancer at age four. Around June 2002, the family moved from state X to their home state Y to be near extended family. Applicant converted his status at work to independent consultant (1099 employee) "to make it worthwhile" for his family. (Tr. 28, 35-36.) Shortly before closing on their new home, Applicant's application for a conventional 30-year mortgage was disapproved, apparently because he was a consultant and his spouse was unemployed. (Tr. 41.) He secured an adjustable rate mortgage at a higher interest rate. He and his spouse questioned whether they could afford it, but they decided to accept the terms because they wanted the house. (GE 3; Tr. 34-37.) Applicant only worked part-time for his then employer on the base in state X because he expected to find a new job in state Y (Tr. 38), and he wanted to be with his daughter. (Tr. 40.) He incurred high costs commuting over 2.5 hours each way to his jobsite in state X. (Tr. 38-39.) His gross wages from consulting totaled only $26,136 in 2002, although he earned $75,931 in 2003. His spouse worked as a coder at a medical center in state Y in 2003, at a gross wage of $29,909. (GE 3; AE 4; Tr. 63.) Around 2003, Applicant's daughter began attending private school at a monthly tuition of $235. She missed some school, and they felt it would be a better environment for her than the public school, which did not enjoy the best reputation. However, they sent their son to public school. (Tr. 60-61.)

Applicant did not manage his personal finances or his income tax obligations responsibly. His mortgage debt rose with each transfer to a new lender. Applicant's credit report shows a mortgage of $195,500, opened in January 2003, was paid off in July 2003 through a new joint mortgage of $248,200. (GE 8.) By 2004, Applicant was seriously delinquent on several credit card accounts, in part because of costs related to construction on their house that they had started in 2002 after they had been preapproved for the 30-year loan that then fell through. (GE 8; Tr. 38.)

In April 2004, Applicant and his spouse filed a joint Chapter 7 bankruptcy petition, listing unsecured nonpriority claims totaling $50,632. The only creditor holding a secured claim was their mortgage lender, to whom they were making $1,974 monthly payments on a balance of $247,637. Their combined monthly expenses exceeded their income by $725. They retained their home and did not include their vehicles, which included his Lexus leased since July 2001. Their unsecured debts were discharged in August 2004. (GE 3; 5; 8; AE A.)

Despite a fresh start with the bankruptcy and his eventual return to full-time employee status for a defense contractor by 2007 (Tr. 42.), Applicant accrued new consumer credit debt, in part because of high commuting costs for his work and for his daughter's care in state X. (Tr. 39, 62.) Three years after his daughter's cancer diagnosis, they commuted to a hospital in state X around 20 times, although the frequency decreased in the fourth and fifth years to eight times and then four times. (Tr. 62.) In May 2005, he and his spouse took out a joint automobile loan of $14,043 for her vehicle. Their loan payment was chronically late, between 30 and 60 days in 2009. As of February 2010, it was 30 days past due on a balance of $4,387 (SOR 1.f). In July 2005, Applicant bought the Lexus that he had leased. He financed $17,850, to be repaid at $435 per month. By January 2010, his loan payment had been 60 days past due twice and 30 days late 19 times (SOR 1.h). In October 2006, Applicant opened a new credit card account. He used the account for travel

expenses and other items. Debt of $3,448 was referred for collection two years later. As of February 2010, the delinquent balance was $4,052 (SOR 1.j). Applicant owed $957 on a new credit card account opened in January 2010, which was $379 past due on a $1,039 balance as of January 2011 (SOR 1.i). (GE 3; 6; 8.) Another credit card account, opened in November 2005, was paid after charge-off in the amount of $403. In April 2007, Applicant and his spouse refinanced their home loan through a new conventional mortgage of $288,000 (SOR 1.k). As of February 2010, their loan was 60 days past due in the amount of $6,159. Applicant and his spouse had filed for a loan modification to reduce their interest rate from 9.7%, but he was denied. (GE 8.) In November 2008, a $100 medical debt from August 2008 was placed for collection (SOR 1.e).

Applicant underpaid his federal income taxes for 2005 through 2007, and his state Y income taxes for at least 2007 and 2008. He indicates that when he worked as a consultant, his bookkeeper underestimated his quarterly income tax obligation. (Tr. 41-42.) Applicant asserts also that he was unaware that he would have to pay taxes to state X as well as to state Y. (Tr. 64-66.) Even so, his recent bankruptcy filing would indicate that his tax problems persisted after he became a full-time employee. *See* AE A. In August 2008, the IRS filed a tax lien against his property for delinquent federal income taxes of $16,751 (SOR 1.a). In October 2008, state Y filed a tax lien of $2,238 against him, which he paid in November 2009. However, state Y tax liens of $1,141 filed in November 2008 (SOR 1.c), and of $2,512 filed in October 2009 (SOR 1.b), had not been paid as of February 2010 (GE 7; 8), despite joint wage earnings of $133,175 in 2009. (AE A.) His spouse retained legal assistance to negotiate with the IRS on their behalf. (AE A; Tr. 66-68.) Their outstanding legal fees of $4,018.08 are being resolved through the Chapter 13 bankruptcy, *infra*.

On February 11, 2010, Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) to renew the secret clearance he needs to work on the military base. He disclosed his 2004 bankruptcy, the delinquent credit card account identified in SOR 1.j, and past-due state and federal taxes. Applicant indicated that he had repayment arrangements in place with both state Y and the IRS,[1] and that he was working with the credit card lender on repayment terms. Applicant explained that his home loan had been 120 days late to qualify for a loan modification, but that he was back to regular payments.[2] (GE 1.)

On March 12, 2010, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM) about his financial issues. Applicant explained that

[1] Applicant testified that they initially established repayment arrangements with the IRS in the 2006 to 2007 time frame (Tr. 43.), and that they made payments of $250 per month for six months in 2008. (Tr. 76-77.) They stopped making payments because with interest and penalties, they were not managing to reduce the debt ("we were actually digging ourselves in a hole because they would continue to charge penalties and fees and it was just not worth it."). (Tr. 77.) They made six months of payments to state Y as well, just shy of $250 per month. (Tr. 76.)

[2] The creditor filed a claim of $21,679.93 with the bankruptcy court (AE A), although Equifax was reporting the loan as past due $24,739 as of August 2010 with last activity in December 2009. (GE 7.) The evidence does not substantiate that he was making his mortgage payments as of February 2010.

he had submitted an offer in compromise to the IRS in June 2009, and that he was paying $250 per month on his delinquent federal income taxes for 2006 through 2008 [sic]. As for his past-due state taxes, Applicant paid $350 a month in 2009 and "periodically since" to resolve two outstanding tax liens. He claimed his auto loans were up-to-date, but he admitted that his mortgage was 60 days late. Applicant was planning to file for Chapter 13 bankruptcy within 30 days, so he had been advised by his attorney to stop paying the mortgage. Applicant expressed his intention to include all his outstanding consumer credit debts, including his car loan, in his bankruptcy. (GE 3.) On March 8, 2010, Applicant received the financial counseling required for a bankruptcy filing. (AE A.) Around that time, Applicant had to put a new transmission in his vehicle at a cost of $1,200. He paid the debt in installments. (Tr. 55-56.)

In early May 2010, Applicant and his spouse filed a joint Chapter 13 bankruptcy petition (SOR 1.l). (GE 4; AE E.) They were underwater on their mortgage in that they owed a loan balance of $312,384 when their home was valued at $250,000. Their car loans (SOR 1.f and 1.h) were also included as secured claims. They stopped paying on the loans because they included them in the bankruptcy. (Tr. 78.) They listed as unsecured priority claims a federal tax debt of $6,632.51 for tax year 2007, and $5,948 (including $1,848 in new debt for 2009) in state Y income tax debt. Among the $52,295.43 in unsecured nonpriority claims were federal income tax debts of $6,325.31 for 2006 and $17,922.40 for 2005, the credit card debts identified in SOR 1.i (as $997) and 1.j, and the medical debt in SOR 1.e. Their medical debt totaled $5,863.40. They reported net monthly income after expenses of $835.35. (GE 4.) In May 2010, the IRS filed a new tax lien of $12,069 (SOR 1.a). (GE 7.)

Applicant's and his spouse's Chapter 13 plan was filed in June 2010. Under the plan, they were to pay $835 per month for 12 months and then $1,160 per month for 44 months for a total of $61,060 to be paid in the bankruptcy. Their payment increases because they will no longer be paying private school tuition for their daughter. (Tr. 59.) Both vehicles would be crammed down through the plan, and priority taxes would be paid in full. (AE A.) They began paying the trustee $835.35 per month in mid-June 2010. (AE F.) In response to the bankruptcy filing, 12 claims were filed. (AE G.) Applicant and his spouse's mortgage lender objected to their plan, alleging an arrearage of $21,679.93 (SOR 1.k), which was not addressed in their plan. The IRS filed a claim of $32,246.62; $17,910.69 of it secured debt. (GE 4; AE G.) Uncertain about what portion of the unpaid federal and state tax debts would be paid as secured with interest in the bankruptcy, the trustee refused to confirm the Chapter 13 repayment plan in August 2010. (GE 4; AE A.) Applicant and his spouse withdrew their plan in September 2010, but they continued to make their monthly payments, and the trustee disbursed funds to their creditors. (AE A.) By late November 2010, $1,537.04 had been disbursed by the trustee to the auto lender in SOR 1.h and $3,111.67 to the lender in SOR 1.f. (AE F.)

On October 8, 2010, Applicant told DOHA that the Chapter 13 had progressed, and that all debts would be paid in full through the bankruptcy trustee, to whom they had been paying $835.35 per month since June 2010. He also indicated that they had been pre-approved for a modification of their mortgage, reducing the interest rate from 9.7% to 5.7%. Their mortgage payment lowered from $2,350 to $1,450 effective August 2010. (GE 3.) As it

turned out, their loan had been transferred in early October, and they had to reapply for a modification through the new lender. As of late April 2011, Applicant and his spouse had not paid their mortgage in about three months on the advice of the lender because they were still trying to modify their loan to reduce their present interest rate of 9.7%. (Tr. 45-46.)

In mid-March 2011, Applicant and his spouse proposed an amended Chapter 13 plan. (AE A.) They were to pay in $61,064 under the plan at $835.35 per month for 12 months and then $1,160 per month for 44 months with all tax refunds in excess of $1,200 to be turned over to the trustee. Provision was made for $37,988 in secured claims to be paid in full. They were also to pay $3,066.61 per month on their mortgage rather than the $2,300 listed on the original plan. Their mortgage arrearage of $21,679.93 is to be paid in full through the bankruptcy. Nonpriority creditors, including income tax debt last due three years before the bankruptcy filing, were to receive about eight or nine percent of their claims. (Tr. 82-85.) As of late April 2011, Applicant and his spouse had paid $9,188.85 toward the $61,064.20 base amount to be paid by January 2, 2015. IRS claims totaled $34,246.62, only $8,600 being secured and $4,530.67 priority debt. Assuming Applicant and his spouse complete the plan, the remainder of their tax debt will be discharged in January 2015. (AE A; Tr. 86.) Applicant and his spouse have not missed a payment under the plan. Nor have they been late in their payments. (Tr. 92-93.) The trustee, who has been involved in Chapter 13 proceedings in his state since 1981 and has handled about 19,000 cases, considers Applicant to be very motivated to follow through with the plan ("He has been a model Chapter 13 debtor."). He has professional support through his bankruptcy counsel to stay on track. (Tr. 96-97.) In the event of a substantial, unexpected change in circumstances, Applicant and his spouse could seek a reduction in their monthly payment to the trustee. (Tr. 97-98.)

As of late April 2011, Applicant was residing in state X during the work week and returning home to state Y on the weekends. (Tr. 40.) He pays $250 per month in rent. (Tr. 47.) He and his spouse have no savings, despite not paying their mortgage payment for the past three months. (Tr. 46, 50) Their payment to the bankruptcy trustee is scheduled to rise to $1,160 per month starting in early June 2011. Applicant indicates they have accounted for the increase in their budget and have $4,000 in a checking account. (AE A; Tr. 48, 53, 75.) Their joint wage annual earnings in 2010 were about $125,000. (Tr. 76.) Applicant has not incurred any new credit card debt since he filed his Chapter 13 petition in May 2010. (Tr. 50-51.)

A program manager, who is familiar with Applicant's work performance for over 20 years in support of both international and domestic programs for a branch of the U.S. military, attests to Applicant's consistency, trustworthiness, and reliability in managing security issues. Applicant continues to interface with international customers frequently, showing discretion and professionalism. This program manager has spent time at Applicant's home in state Y and observed him to share close bonds with his family. (AE B.) Applicant's current supervisor for the past four years has observed Applicant to be hardworking, ethical, and courteous. Applicant is well respected by their military customer. (AE C.) Applicant is also recommended for a position of trust by a colleague familiar with Applicant's work in support of acquisition programs at the base. He trusted Applicant enough to accept his help to care for his elderly mother. (AE D.)

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 concern for Financial Considerations is set out in AG ¶ 18, as follows:

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

Applicant and spouse had $50,632 in unsecured debt discharged in a Chapter 7 bankruptcy in 2004. Over the next six years, they ran up new credit card balances around $16,173 on six accounts as of May 2010. The debt in SOR 1.j had been in collection for some time. Applicant was heavily in debt to state Y and the IRS for back taxes. Between August 2008 and May 2010, the IRS and state Y filed tax liens against him totaling $34,711. As of April 2011, one state tax lien, in the amount of $2,238, had been released. Disqualifying conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts," and ¶ 19(c), "a history of not meeting financial obligations," apply. 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," is pertinent to the financial struggles that precipitated their April 2004 Chapter 7 bankruptcy filing. Applicant's and his spouse's monthly expenses exceeded their net income by $725, and their negative cash flow cannot entirely be attributed to a high adjustable rate mortgage. He was leasing a 2001 model-year Lexus for $386 per month and they had sizeable credit card debt at that time.

Applicant's financial problems are too recurrent and recent to apply mitigating condition 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." As of his May 2010 Chapter 13 bankruptcy filing, he owed delinquent federal taxes for 2005, 2006, and 2007, and state taxes for 2007, 2008, and 2009, in addition to the largely joint credit card debt and $5,863.40 in medical debt accrued since the Chapter 7 bankruptcy discharge.

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 only in part. His daughter's cancer diagnosis is an unforeseen circumstance that had an adverse financial impact, even if most of her medical expenses were covered by insurance. Applicant switched his status at work to consultant for the flexibility, and his gross earnings were only $26,136 in 2002. This employment decision, with all its tax and personal credit implications, was within Applicant's control, but it is also understandable under the circumstances. However, Applicant's decision to then commit to a high-rate adjustable mortgage in June 2002, when he had concerns about its affordability, raises issues about his financial judgment. Also, AG ¶ 20(b) does not fully explain Applicant's delinquent tax debts or the late payments on the mortgage, car loans, and some credit card accounts (including SOR 1.j), especially in 2008 and 2009 when their household wages were $92,192 and $133,175. Applicant knew as of 2007 that he owed back taxes to the IRS for 2006 (Tr. 65.), yet he underpaid his federal taxes for 2007 as well, by more than $6,000. He should have adjusted his tax payments and his withholdings for subsequent

years. Even if he made six $250 payments to the IRS in 2008, and resolved the $2,238 state Y tax lien out-of-pocket in November 2009, these payments would not adequately explain his chronic delinquency of 30 to 60 days on his spouse's car loan in 2009, when their income exceeded $100,000.

Applicant's Chapter 7 discharge in August 2004 relieved him of the burden of $50,632 in unsecured debt. The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts under AG 20(d):

> In order to qualify for application of [the "good faith" mitigating condition], 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 [or statute of limitations]) in order to claim the benefit of [the "good-faith" mitigating condition].

(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. June 4, 2001)). Applicant's Chapter 7 discharge falls short of the good-faith effort required under AG 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." As for his recent Chapter 13 filing, his initial plan was withdrawn in September 2010 after the trustee objected, in part because it appeared that Applicant could afford to pay more than the plan specified, and the plan did not address his $21,679.93 mortgage arrearage or the IRS debt in SOR 1.a. Applicant filed an amended plan in March 2011 that is yet to be confirmed. As proposed, $17,910.69 of his IRS debt is a contingent claim, and his unsecured creditors will be paid a small percentage.

Applicant is credited with resolving one state tax lien of $2,238 in November 2009, and with paying his bankruptcy trustee $835.35 per month for a total of $9,188.85 as of April 2011, pending confirmation of his Chapter 13 plan. These payments could implicate AG ¶ 20(d), although the more pertinent mitigating condition is 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 received the counseling required for a bankruptcy filing, but because this is Applicant's second bankruptcy within the last seven years, I cannot fully apply either AG ¶ 20(c) or ¶ 20(d) without substantial progress in the bankruptcy to guarantee that he is likely to complete it and without favorable changes in his financial habits to conclude that his financial problems are not likely to recur. Applicant has almost one year of payments, but he is less than a quarter through the bankruptcy as presently proposed. As of June 2011, Applicant's monthly payment is to increase to $1,160. He plans to make 44 payments in that amount, with a final payment in January 2015. Applicant plans to send his daughter to public school in the fall, and the tuition savings appear to be sufficient to cover the increase. As for his prospects of making these larger payments, Applicant's trustee described him as a "model Chapter 13 debtor." (Tr. 97.) The

trustee, who has been involved in Chapter 13 proceedings in his state since 1981 and has handled about 19,000 cases, believes Applicant has the motivation and professional legal assistance to remain on track. (Tr. 95-97.)

That being said, the Government has legitimate ongoing concerns about Applicant's handling of his home loan (SOR 1.k). As of his February 2010 e-QIP, Applicant indicated that he had been 120 days late on his mortgage to qualify for a loan modification, but that he was back to making payments. But his credit report shows that he was $6,159 past due because he had not made his payments for January or February 2010. (GE 8.) As of September 2010, his loan was about $21,679.93 in arrears. Applicant told DOHA in October 2010 that his and his spouse's joint mortgage loan had been pre-approved for a loan modification that would reduce their interest rate from 9.7% to 5.7%. Effective August 2010, their mortgage payment lowered from $2,350 to $1,450 per month. However, four days earlier, the bankruptcy claim on the mortgage had been transferred to the present mortgage holder, which did not accept the loan modification. As of late April 2011, Applicant and his spouse had not paid their mortgage for the previous three months, albeit on the advice of the new mortgage lender, because they had reapplied to modify his loan. It is unclear what will happen with the new arrearage or whether their loan will be modified. Applicant had put aside $4,000, but it would cover less than two months of his current loan obligation. Although he is incurring no new credit card debt, he needs to show more progress in repaying his delinquent debt through the bankruptcy, and a sustained track record of timely payments of his living expenses. It is too soon to conclude that his financial problems are behind him and that he can be counted on to manage his personal finances responsibly.

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 relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(a).[3] Applicant and his spouse ran up the balances on several credit card accounts before 2004, in part to maintain their household after he switched to consultant status at work so that he could spend more time with his ill daughter. As of April 2004, they were seriously overextended. After they were afforded a fresh financial start through the Chapter 7 discharge, Applicant did not always handle his finances responsibly. He continued to underpay his income taxes for several years after he had returned to full-time status at work. Despite these extra funds in his pocket, and household wages which should have been sufficient to cover reasonable living expenses, he allowed credit card accounts to become delinquent, and he was chronically late in loan payments. His record for professionalism and dedication on the job is unassailable, but it does not overcome the

[3]The adjudicative process requires assessment of the following factors:

(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.

judgment concerns raised by his mismanagement of his personal finances, including his income tax obligations.

The DOHA Appeal Board addressed a key element in the whole-person analysis in financial cases stating:

> In evaluating Guideline F cases, the Board has previously noted that the concept of "'meaningful track record' necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrates that he has '. . . established a plan to resolve his financial problems and taken significant actions to implement that plan.' The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. *See* Directive ¶ E2.2(a) ('Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.') There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted). Applicant is credited with pursuing resolution of his present debts through a Chapter 13 plan, wherein his unsecured creditors would at least receive a percentage of their claims. The principal claims of the auto lenders in SOR 1.f and 1.h have been paid through the bankruptcy. The other debts remain unresolved. At some future date, Applicant may be a good candidate for a security clearance. But for the reasons noted above, I am unable to conclude at this time that it is clearly consistent with the national interest to renew his security clearance.

Formal Findings

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

Paragraph 1, Guideline F: 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:	For Applicant
Subparagraph 1.g:	Against Applicant

Subparagraph 1.h:	For 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

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