



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 11-03155 |
| |) | |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

02/19/2013

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

While a self-employed building contractor, Applicant took out loans to finance new construction on speculation. He also used credit cards to pay for incidentals. Three loans went to foreclosure, and he defaulted on his payments for a leased vehicle. Although he satisfied a \$1,267 judgment, he still owes more than \$50,000 in delinquent debt, on which he is making no payments. Clearance denied.

Statement of the Case

On August 24, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, Financial Considerations, and explaining why it was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DOD took the action under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel*

Security Clearance Review Program (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

Applicant submitted an undated response to the SOR allegations, which was received by the Defense Office of Hearings and Appeals (DOHA) on October 2, 2012. He requested a hearing. On December 4, 2012, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On January 3, 2013, I issued a notice scheduling a hearing for January 23, 2013.

I convened the hearing as scheduled. Seven Government exhibits (GEs 1-7) and five Applicant exhibits (AEs A-E) were admitted without objection, although Applicant questioned the accuracy of some of the financial information in the credit reports entered as GEs 3 and 4. Applicant and his significant other testified, as reflected in a transcript (Tr.) received on January 31, 2013.

I held the record open for two weeks after the hearing for Applicant to submit additional exhibits, including proof that he satisfied a financial judgment. On February 4, 2013, Applicant timely forwarded five character reference letters (AEs F-J), and a letter from the judgment creditor identified in SOR 1.a (AE K). The exhibits were entered without objection.

Findings of Fact

The SOR alleges under Guideline F that as of August 24, 2012, Applicant owed two judgments: of \$1,267 (SOR 1.a) and \$10,563 (SOR 1.b); \$16,790 to a lender foreclosing on two properties (SOR 1.c and 1.d); and \$52,108 in additional consumer credit debt charged off or placed for collection (SOR 1.e-1.m). In his Answer, Applicant admitted the validity of the judgment debt in SOR 1.a, but he indicated it had been paid after a mediated settlement. The debts in SOR 1.b-1.d were from foreclosed properties. He did not deny the judgment award in SOR 1.b, but he contested its validity. Applicant denied any knowledge of outstanding loan balances on SOR 1.c and 1.b after foreclosure. Applicant admitted the debts in SOR 1.f-1.g and 1.i-1.k. He did not recognize the debt in SOR 1.l, which was pending verification.¹ Applicant denied the validity of the debts in SOR 1.e, 1.h, and 1.m. After considering the pleadings, exhibits, and transcript, I make the following additional findings of fact.

Applicant is a 50-year-old high school graduate, who served in the U.S. military from March 1981 to April 1983. (GEs 1, 2; Tr. 63.) He was issued a top secret clearance around June 1981 for his military duties as a linguist. In April 1983, he was issued a general discharge under honorable conditions for misconduct (a pattern of minor disciplinary infractions). (GEs 1, 2; Tr. 78-79.) Applicant has been employed by a defense contractor since October 2010, initially as an assistant site coordinator and now as site coordinator on

¹Based on the evidence entered at the hearing, the Government conceded that the \$8,265 debt in SOR 1.l was an updated collection balance of the \$4,936 debt in SOR 1.g and not a separate debt.

a decommissioned ship docked at a nearby military base. (Tr. 60, 62.) He requires a security clearance for his present position. (GEs 1, 2.)

Applicant was twice married and divorced. (Tr. 80.) He and his second wife had two sons, who are now 13 and 15, for whom he has paid child support since 2005. (AE D; Tr. 49-50, 80-81.) His child support was initially \$560 per month. About four years ago, it increased to \$750 per month. (Tr. 51.) Applicant has been in a cohabitant relationship since April 2007. (GEs 1, 2; Tr. 104, 143.)

Applicant was unemployed from November 2003 to March 2004. From March 2004 to December 2006, Applicant worked as an equipment operator for a site remediation company involved in cleaning up a local dump. Around January 2005, he sold a small cabin that he had owned in another state (state X). He started his own residential construction business out of his primary residence in state Y. Applicant bought a lot costing around \$8,000 in a secondary market in state X, and he paid for the development of the property with the equity from the sale of his cabin. In February 2006, he obtained a \$175,000 mortgage on the newly constructed home. (GEs 3, 4; Tr. 68.) Loan payments were around \$1,450 per month. He used the loan to purchase two more buildable lots and to pay for the site work (foundation and framing) of a small ranch on one of the new properties. (Tr. 68-74.) In July 2006, he took out a \$170,000 mortgage on the ranch, to be repaid at \$1,277 per month. Applicant did not wait for the first or second property to sell before he constructed a chalet on the third lot. Despite being laid off by the site remediation company in December 2006 (GE 1.), he obtained a \$228,000 loan on the chalet property in April 2007 (SOR 1.c). Monthly payments on the loan were \$2,016. (GE 3; Tr. 71-72.) He covered the mortgages through June 2007, when he ran out of funds. (GE 3; Tr. 75.) The three loans on the new residential construction in state X went to foreclosure. (GEs 3, 4.)

Applicant stopped paying on some consumer credit accounts in 2007, including charge account debts of \$29,933 (SOR 1.f), \$4,936 (SOR 1.g), and \$5,131 (SOR 1.i), which were incurred in the residential construction or for incidentals related to the homes in state X. (GEs 3-4, 7.) After October 2007, he made no payments on an auto lease opened in February 2006. The account was placed for collection around May 2008, when his account was \$2,600 past due. As of August 2008, he owed a \$5,415 balance that was charged off (SOR 1.j). (GEs 3, 4, 7.)

In January 2008, a lumber company obtained a \$10,563 judgment against Applicant. (GEs 3-4, 6-7.) A lien was placed against one of the three properties in state X for nonpayment of the judgment. (GE 6; Tr. 86.) Applicant asserts, with no corroboration, that he paid the lumber company's final bill, so he was "a little taken aback" when he saw the judgment on his credit record. (Tr. 86-87.) In August 2008, a clothing retailer placed a delinquent balance of \$218 with the collection agency in SOR 1.k. (GEs 3, 7.) In October 2008, a small claims judgment of \$1,267.74 was entered against Applicant in state Y for costs associated with a real estate transaction. (GEs 2, 5; AE A.) Execution of the judgment was stayed pending payment of half immediately with the remainder due no later than December 23, 2008. (AE A.) Applicant satisfied the judgment in full. (GEs 1, 2; AE K.)

Applicant's other debts went unpaid as he concentrated on looking for employment in state Y and, more recently, on resolving tax issues. (Tr. 45, 138.) From June 2008 to December 2008, and from March 2009 to December 2009, Applicant worked as a heavy equipment operator for an asphalt paving company. Due to the seasonal nature of asphalt work, Applicant collected unemployment over the winters. Following his second layoff from the asphalt company in December 2009, Applicant was out of work until October 2010, when he began his current employment. (GE 1; Tr. 76.)

Applicant began to have tax problems around 2005. For tax year 2005, Applicant underpaid his federal taxes by \$3,769.38 and his state taxes by \$856.77. In 2009, the IRS intercepted most of his 2008 federal income tax refund to satisfy his tax debt for 2005. After state Y also intercepted his state tax refund, he still owed \$379.11 for 2005. On January 25, 2010, the state notified him that he owed a delinquency of \$337.35 for tax year 2006. On February 8, 2010, the IRS notified Applicant that it had no record of him filing federal returns for tax years 2004 and 2007.² Applicant explained that one year he had given his financial records to an accountant, who then failed to prepare his federal and state returns. Applicant indicated that another year, his ex-wife had claimed both of their sons on her returns when they had agreed he could claim the older son as his dependent. (Tr. 46-47.) In December 2011, the state notified Applicant that he owed \$412.42 in delinquent taxes for 2010. On February 1, 2012, the state intercepted his federal tax refund of \$2,295 and applied it to taxes owed. As of March 2, 2012, his state tax balance was \$419.79. As of June 5, 2012, he had resolved all his outstanding tax issues. (AE C; Tr. 81.)

On September 21, 2010, Applicant obtained a copy of his credit report, which included the delinquent accounts in SOR 1.e, 1.h, 1.k, 1.l, and 1.m. Applicant sent letters to the creditors asking them to verify the debts. On November 16, 2010, he filed formal complaints with the three credit bureaus, requesting verification, validation, and deletion from his credit record of the collection debts in SOR 1.h and 1.k-1.m. (GE 2.)

On November 15, 2010, Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP). Concerning whether he had any property repossessed or foreclosed within the last seven years, Applicant listed debt of \$500,000 for the three houses that he built on speculation from 2006 to 2007, which went to foreclosure. He also indicated that his vehicle had been repossessed. He explained that he was working for himself when the economy and housing market "began to tank and [he] lost everything." Applicant also disclosed judgment debts of \$10,000 (SOR 1.b) and \$1,000 (SOR 1.a), the latter having been settled. Applicant admitted that "several agencies" had placed debts totaling \$8,300 for collection. Another \$16,000 in debt had reportedly been charged off. He explained that he was "currently disputing and seeking validation of collection actions on credit report to resolve and make settlements with various creditors." (GE 1.)

² Applicant's significant other testified that she submitted both her and Applicant's returns together, and his return was rejected on that basis. (Tr. 129.) She also testified that he owed a large tax bill (around \$60,000) for 2006 because his accountant did not file a return. His tax return was complicated because it dealt with the sale and purchase of property. (Tr. 130.) Available evidence does not support a tax bill of \$60,000, although it does show that he underpaid his federal and state taxes for 2005, and his state taxes for 2006.

A check of Applicant's credit on November 24, 2010, revealed the two judgments, the three mortgage loans in foreclosure, a \$5,415 charged-off balance on the auto lease, and three large credit card accounts in collection (SOR 1.f, 1.g, and 1.i) totaling \$40,479. Also on Applicant's credit report were some smaller delinquent accounts in collection: a disputed \$204 telephone debt (SOR 1.e); a \$334 cable debt from September 2007 (SOR 1.h); a \$315 updated balance of retail clothing debt (SOR 1.k); and a disputed \$332 utility services debt (SOR 1.m). (GE 4.)

On December 16, 2010, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM) about his delinquent accounts.³ He indicated that he first learned of the \$10,563 judgment when he reviewed his credit report to prepare his e-QIP. He recognized the judgment creditor and indicated that the account became delinquent after he was unable to sell the homes built on speculation. Applicant averred that he had paid a smaller judgment estimated at \$1,000. As for the other debts on his credit record, Applicant admitted knowing about the three mortgage loans that went to foreclosure, although he was unaware of any balances owed. Concerning collection accounts, Applicant recalled missing payments for cable service (SOR 1.h) for one of the homes in state X. He speculated that the utility services debt (SOR 1.m) might be for one of the houses in state X. Applicant disputed any outstanding balances owed for telephone services (SOR 1.e) or for retail clothing purchases (SOR 1.k). Applicant explained that the credit card debts in SOR 1.f and 1.g were incurred to purchase appliances and building materials for the new construction. Applicant attributed his delinquencies to the downturn in the housing market and his inability to repay the debts. He expressed his intent to resolve all his financial obligations. (GE 2.)

As of April 20, 2012, Equifax Information Services was reporting the \$10,563 judgment (SOR 1.b) as unpaid. Also, the credit lender in SOR 1.g had reportedly charged off \$4,936 and placed the debt with the assignee identified in SOR 1.l. As of February 2012, the assignee was reporting an unpaid balance of \$8,265 (SOR 1.l). Two other credit card accounts had outstanding delinquent balances of \$29,933 (SOR 1.f) and \$5,131 (SOR 1.i). Two of the disputed smaller collection debts, of \$373 for clothing purchased at a retailer (SOR 1.k), and of \$204 for telephone costs (SOR 1.e), were still on his credit record. The mortgage lender for the first home built in state X reported a zero balance in foreclosure as of September 2008. As of November 2007, Applicant was reportedly past due \$6,613 on a \$168,000 balance (SOR 1.d) and \$10,177 on a \$228,000 balance (SOR 1.c) on the other mortgage loans. The credit information about those mortgages had not been updated to indicate deficiency balances, if any, on those loans after foreclosure. (GE 3.)

In June 2012, Applicant was asked by DOHA to document any payments of his delinquent accounts. He forwarded a current credit report from Experian, showing that little had been done to update his credit record with regard to the mortgages in foreclosure, the

³In the investigator's report of the interview (GE 2.), Applicant is variously referred to by his surname, by "the subject," and, inexplicably, by another name that is not his. This name was used when reporting the civil judgments, as well as the mortgages (SOR 1.c, 1.d), vehicle lease (SOR 1.j), and some credit card debt (SOR 1.g) that Applicant recognized as being his debts.

auto lease, or other debts. Only the lenders in SOR 1.k (\$383) and SOR 1.l (\$8,265) were reporting recent account history as of 2012. His credit was rated as poor. Applicant provided DOHA with documentation showing he was current in his child support payments. Concerning the foreclosed mortgages for the homes in state X, Applicant indicated that he took on side jobs to fund the mortgages. When the houses failed to sell, foreclosure was his only option. As of June 2012, he had received no information regarding the foreclosures. Applicant estimated that he had \$435 in net income each month after paying his rent (\$600), car expenses (\$420), medical expenses (\$50), child support (\$750), and miscellaneous expenses (\$448). (GE 2.)

In July 18, 2012, Applicant took his tax refund for 2011 and paid \$3,396.93 to state Y for delinquent sales taxes on a 2003 model-year motorcycle purchased for \$29,500 in early June 2005. He took possession of the motorcycle without the title. Sales taxes totaling \$2,065 went unpaid, and the seller later closed the business. Around December 2009, Applicant filed a complaint with state Y's dealer's license and regulations office seeking permission to bring an action against the 2005 surety bond. While the board voted to allow Applicant to proceed against the surety bond, the bond had been canceled in December 2007, and the time to bring action against the bond had expired. In July 2012, Applicant paid for a surety bond to obtain the title so that he could sell the motorcycle to pay his debts. (AE E; Tr. 106, 113-26.) Applicant believes that the motorcycle has to be bonded for two years before he can obtain the title. (Tr. 106.) The present value of the motorcycle is around \$9,000. (Tr. 107-08.)

On August 31, 2012, the collection agency identified in SOR 1.e offered to settle a \$54.85 balance owed on a different telephone account than that listed on his previous credit reports. (AE B.) Applicant assumed the notice was in response to his 2010 request for verification, and because he did not recall ever having an account with the telephone company listed on the notice, he made no payment. (Tr. 40-41.)

As of January 22, 2013, Equifax reported judgment debt of \$10,563 (SOR 1.b); charged-off credit card debt totaling \$39,067 (SOR 1.f, 1.g, and 1.i); and collection debts of \$204 (SOR 1.e), \$334 (SOR 1.h), and \$409 (SOR k). The lender holding the mortgages in SOR 1.c and 1.d had not updated the status of either account since November 2007. (GE 7.) While Applicant had cable service for one of the properties in state X, Applicant does not believe that he owes the cable debt in SOR 1.h. He is also disputing an unpaid balance on the clothing account identified in SOR 1.k ("I used the card once, paid the bill, and then got something in the mail stating that I owed them money."). (Tr. 89-93.) Applicant also continues to question the validity of the utility debt in SOR 1.m. (Tr. 97.) Applicant has made no effort to contact the court about the judgment in SOR 1.b, or to follow up on his other debts, including the undisputed credit card debts in SOR 1.f, 1.g, and 1.i. His priority has been paying his child support. He is unable to afford to resolve his debts at present. (Tr. 89, 109.)

Applicant's significant other owns their home. (Tr. 137.) She is employed as an event coordinator. (Tr. 112.) Applicant's monthly net salary of \$2,703 includes Veterans Administration (VA) disability income of \$251 per month. (GE 2.) Applicant gives his

significant other money for oil each month. Some months, he pays for the groceries and electric utility. He has not been able to give her rent money for some time. (Tr. 136.) Applicant pays \$187 per month for a cell phone service for himself and the elder of his two sons with whom he still has a positive relationship. (Tr. 102.) He has about \$600 in his checking account, but the \$250 check for the home heating oil had not yet cleared his account. (Tr. 109, 136-37, 148.)

Applicant has not had any credit counseling. He contacted the VA for financial guidance only to be referred from department to department. (Tr. 111.) Over the past year, Applicant and his significant other have been dealing with VA paperwork about his knee. (Tr. 147.) Applicant's goal is to clear up his credit record so that he can purchase a home that his sons will eventually inherit. (AE G; Tr. 141.)

A Navy captain, who is familiar with Applicant's work performance as caretaker for a decommissioned ship, strongly recommends that Applicant be granted a secret security clearance. Applicant has demonstrated good character, critical thinking skills, and the ability to manage a work site. (AE H.) Applicant's significant other (AE G.) and a longtime friend (AE I.) have seen the pride Applicant takes in his present employment.

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 about 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:

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.

Between February 2006 and April 2007, Applicant took out loans totaling \$573,000 on three homes he constructed on speculation in a secondary real estate market. His monthly mortgage payments totaled around \$4,743. The third, and largest, of the loans was opened in April 2007, when he was relying on his VA disability and his own construction business for income, and finished construction had not sold. Around June 2007, Applicant stopped paying on the mortgages when his money ran out, and the lenders eventually initiated foreclosure. He made no payments on a \$5,131 credit card debt for building materials after February 2007. Around August 2007, he stopped paying on two other large credit card debts, of \$4,936 and \$29,933, incurred for appliances and other incidentals related to the residential construction. Applicant also defaulted on his payments for a leased vehicle. A \$5,415 balance was charged off after the vehicle was repossessed.⁴ A lumber company obtained a \$10,563 judgment against him in January 2008. In October 2008, a \$1,267 judgment was issued against him for costs related to a real estate transaction. AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” are established.

⁴ The Government alleged in SOR 1.j that Applicant owed a charged-off balance of \$2,600 on the vehicle lease account. While he had been \$2,600 past due, a \$5,415 balance was charged off. He was not reported to owe a delinquent balance following the repossession.

Applicant disputes the smaller debts that were on his credit record as of April 2012 (SOR 1.e, 1.h, 1.k, and 1.m). Concerning the \$10,563 judgment (SOR 1.b), Applicant claims he paid the final bill. For AG ¶ 20(e) to apply, there must be a “reasonable basis to dispute the legitimacy of the past-due debt,” and also “documented proof to substantiate the basis of the dispute . . . or evidence of actions to resolve the issue.”⁵ In the fall of 2010, Applicant sent letters to the creditors identified in SOR 1.e, 1.h, 1.k, 1.l, and 1.m, asking to verify the respective debt. He received a settlement offer from the assignee identified in SOR 1.e, but the creditor and account balance do not match the information for the delinquent telephone debt reported by the credit bureaus. The discrepant information calls into question the validity of SOR 1.e. He denies any responses from his other creditors. Concerning the cable bill in SOR 1.h, Applicant admitted to the OPM investigator that he had missed payments on a cable account for one of the homes built in state X. The debt is likely valid. Concerning the collection debt in SOR 1.k, which was placed by a clothing retailer, Applicant presented no proof that he paid the original creditor.

Equifax is no longer reporting the accounts in SOR 1.l and 1.m on Applicant’s credit record. The debt in SOR 1.l was a collection balance for the undisputed debt in SOR 1.g. It is unclear whether the assignee still holds the debt. Applicant may have opened a utility account (SOR 1.m) for the new construction in state X, but the evidence to prove that debt is also inconclusive. AG ¶ 20(e) applies to the alleged debts in SOR 1.l, and 1.m, as well as to SOR 1.e. Therefore, I resolve these subparagraphs in his favor.

It is difficult to accept Applicant’s uncorroborated challenge to a court judgment (SOR 1.b). The creditor would have had to present evidence to warrant the judgment, which is established by court record (GE 6). Applicant offered no proof of payment of the judgment, so AG ¶ 20(e) is not satisfied as to the judgment.

Concerning the mortgage delinquencies in SOR 1.c and 1.d, Applicant’s credit record has not been updated since November 2007. It is unclear whether he owes a balance on either loan after foreclosure. Applicant’s credit reports show a zero balance on his auto lease after charge off. Nevertheless, his defaults of the car lease and mortgage loans are sufficient in and of themselves to raise considerable Guideline F concerns. AG ¶ 20(e) does not mitigate his admitted loan defaults nor the sizeable credit card delinquencies in SOR 1.f, 1.g, and 1.i.

Concerning potential factors in mitigation, 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 because Applicant has made no effort to address even his known, undisputed delinquencies. He has made no effort to contact the court about the

⁵ Potentially mitigating condition AG ¶ 20(e) states as follows:

(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.

outstanding judgment in SOR 1.b or his mortgage lender about the defaulted loans in SOR 1.c and 1.d. He has not contacted his credit card lenders to arrange for any settlements or to make repayment arrangements.

Mitigating condition 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,” is implicated in that Applicant had no control over the downturn in the real estate market in state X. However, Applicant exercised questionable financial judgment by taking on debt for new construction when he was having trouble selling the first house. He took on a \$228,000 mortgage in April 2007 for the third house, four months after he had been laid off by the site remediation company, when he had no real source of steady income apart from his VA disability. He knowingly assumed the financial risk.

Several factors have compromised his ability to repay his debts, most notably his ongoing child support obligation of \$750 per month, which understandably is his first priority. Applicant was also unemployed from December 2008 to March 2009 and from December 2009 to October 2010. Income tax refunds were intercepted by federal and state tax authorities to repay tax delinquencies for 2005 and 2006. His tax problems were not fully resolved until May or June 2012. In July 2012, he used his income tax refund for tax year 2011 to pay sales taxes for a motorcycle purchased for \$29,500 in early June 2005, just weeks after his divorce. Whether or not he could afford the motorcycle at the time (he was employed by the site remediation company), he did not handle the title and sales tax issues responsibly. He had an obligation to his creditors, and there is no evidence that he followed up on his initial inquiries of fall 2010. AG ¶ 20(b) does not fully mitigate the financial judgment concerns.

Mitigating conditions 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,” speak to efforts to address the financial issues. Applicant’s payment of the judgment in SOR 1.a warrants a favorable finding as to that debt, but it is not enough to apply either AG ¶ 20(c) or AG ¶ 20(d). A few inquiries to the VA about financial counseling do not satisfy AG ¶ 20(c). By fall 2010, Applicant knew that he had a \$10,563 civil judgment on his record. As of January 2013, he has not made any effort to contact the court about the judgment, which continues to adversely affect his credit rating. If he had proof that he paid the debt, one would expect him to have attempted to resolve the issue with the court. He has not tried to settle or arrange for repayment of his undisputed \$40,000 in credit card delinquencies. Even if the mortgage lender does not pursue him for any balance remaining on the foreclosed loans identified in SOR 1.c and 1.d, he owes more than \$50,000 in past-due debt that is not likely to be resolved in the near future. Applicant is not currently behind on his day-to-day living expenses, largely because his significant other has not asked him for rent in some time. With respect to resolving his tax issues, payments were made largely through interception of refunds. Applicant does not have a track record of payments on his delinquencies from which I

could reasonably conclude that the debts are being resolved. The financial considerations concerns are not fully 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).⁶

Applicant's default on three home loans, three large credit card debts, and a vehicle lease call into question whether he can be counted on to comply with his obligations irrespective of personal interest or convenience. The DOHA Appeal Board has held that an applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve financial problems and take significant actions to implement the plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). In October and November 2010, Applicant asked for verification of those debts on his credit record that he did not recognize. Two years passed without any effort to follow up on those inquiries, or to contact the creditors owed acknowledged debt, apparently because he lacks the financial resources to make significant inroads into cleaning up his credit. While his contributions to his employer are viewed favorably, they do not mitigate the security risk presented by financial delinquencies exceeding \$50,000. Based on the record before me, I am unable to conclude that it is clearly consistent with the national interest to grant Applicant a security clearance at this time.

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:

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| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraph 1.a: | For Applicant |
| Subparagraph 1.b: | Against Applicant |
| Subparagraph 1.c: | Against Applicant |
| Subparagraph 1.d: | Against Applicant |
| Subparagraph 1.e: | For Applicant |
| Subparagraph 1.f: | Against Applicant |

⁶The 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;
- (9) the likelihood of continuation or recurrence.

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| Subparagraph 1.g: | Against Applicant |
| Subparagraph 1.h: | Against Applicant |
| Subparagraph 1.i: | Against Applicant |
| Subparagraph 1.j: | Against Applicant |
| Subparagraph 1.k: | Against Applicant |
| Subparagraph 1.l: | For Applicant |
| Subparagraph 1.m: | For 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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Elizabeth M. Matchinski
Administrative Judge