DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 11-03918
	)	
	)	
Applicant for Security Clearance	)	

Appearances

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

09/13/2012

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Decision

_____

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant owes less than $1,000 in past-due medical debt, but his evidence falls short of disproving his liability for a $25,000 judgment awarded a former landlord in September 2010. He has made no payments toward the judgment. Applicant is paying his current debts on time, but his handling of the landlord-tenant dispute continues to raise doubts about his financial judgment. Clearance denied.

Statement of the Case

On February 14, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, Financial Considerations, and explaining why it was unable to find it clearly consistent with the national interest to grant him security clearance eligibility. DOHA took the action under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as

amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant submitted an undated Answer to the SOR allegations, and he requested a hearing. On June 6, 2012, the case was assigned to me to conduct a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On June 7, 2012, I scheduled a hearing for June 25, 2012.

I convened the hearing as scheduled. Seven Government exhibits (GEs 1-7) and two Applicant exhibits (AEs A-B) were admitted without objection. Applicant also testified, as reflected in a transcript (Tr.) received on July 2, 2012. The record was held open following the hearing. As noted below, four additional Government exhibits (GEs 8-11) and ten additional Applicant exhibits (AEs C-L) were admitted.

Procedural and Evidentiary Rulings

I held the record open after the hearing, initially until July 17, 2012, for Applicant to submit additional documents. Applicant timely forwarded through Department Counsel seven exhibits, which were accepted into the record without objection as AEs C-I.

Review of AEs C-I led me to reopen the record for clarification. On August 2, 2012, I notified both parties of my intent to consider pertinent sections of the state's landlord and tenant statutes,[1] subject to objections and comments within 15 days of receipt of the Order. Applicant was granted 15 days from receipt of the Order to submit clarification and if appropriate, documentation addressing the judgment award and his appeal. Applicant received the Order on August 4, 2012. On August 5, 2012, Applicant submitted an email message addressing some of the issues in the Order. His email was marked and entered as AE J. On August 19, 2012, Applicant provided information in an email message (AE K). Documents submitted via a separate email were admitted collectively as AE L. Applicant exhibits AE J-L were admitted without objection.

On August 21, 2012, Department Counsel offered four exhibits (GE 8-11) for inclusion in the record. One copy of each document was forwarded to Applicant for his review and comment by August 31, 2012. Applicant did not file a response by the due date. On September 6, 2012, Applicant objected to proposed GE 8, a contemporaneous newspaper article dated January 28, 2010, reporting Applicant's involvement in the landlord-tenant dispute that led to the judgment in SOR 1.a. Applicant objected in that the reporter was not present in the courtroom, never spoke to him, and did not clearly identify the source of the information. Given the article's relevance and its preparation in the normal course of business by a reporter, who indicates he reviewed the court documents, I admitted GE 8 as a full exhibit for consideration in light of all the evidence before me for review. GEs 9-11 were admitted without objection.

[1] The full text of sections 5401:1, 540:1(a), 540:2, 540:3, 540:13(a), 540:13(d), 540:14, 540:20, and 540:25 were set forth in my Order of August 2, 2012.

Findings of Fact

The SOR alleges under Guideline F that as of February 14, 2012, Applicant owed a judgment debt around $25,000 from 2010 (SOR 1.a), six medical debts in collection totaling $1,453 (SOR 1.b-g, 1.i), and a $238 utility debt in collection (SOR 1.h). Applicant indicated that he had legal counsel to contest the judgment. He denied the debts in SOR 1.b-1.c, and 1.g-1.i on the basis that they had been paid, and the hospital debt in SOR 1.e without explanation. Applicant admitted the medical debts in SOR 1.d and 1.f, which were copay obligations on which he was making payments. After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is 47 years old, divorced, and has a graduate equivalency diploma. He has been employed by a defense contractor since January 2011 (Tr. 50), and he requires a confidential security clearance for his present duties. (GEs 1, 3.) He started as an assembler and now drills cabinets. (Tr. 39, 50-51.)

Applicant was married from May 1990 to September 2002. He and his ex-wife had two children together. Applicant raised the children from when their daughter and son were six and nine years of age. (Tr. 35.) Applicant's son is now 21 and serving in the U.S. military. (GE 1; Tr. 38.) Applicant's daughter moved in with her mother two years ago, when she turned 16. (Tr. 39-40.) Applicant was ordered to pay child support of $87 per week in June 2011 because of his reemployment. He paid an additional $75 per month toward an arrearage of $658, which has been satisfied. (GEs 1, 2.) Applicant is no longer required to pay child support because his daughter turned 18 in June 2012. (Tr. 38.)

In June 2005, Applicant began employment as a yard worker with a lumber company. He cohabited with his then girlfriend in her home. In 2006, Applicant injured his shoulder at work. (Tr. 35.) He was out of work approximately four months after shoulder surgery. (GE 3.) Applicant incurred medical debt at a local hospital, of $428.80 in May 2006 (SOR 1.d) and $383.04 (SOR 1.f) in February 2007, for which he had payment responsibility (amounts applied to deductible) that went unpaid.[2] (GE 4.)

In May 2007, Applicant took over the mortgage on his girlfriend's home. He took out a loan of $140,000 to be repaid at $1,157 per month. Applicant paid the mortgage on time through October 2007. In November 2007, Applicant sustained a second shoulder injury on the job (Tr. 35, 53), and he could not afford the monthly mortgage payment on his workmen's compensation income.[3] (Tr. 53.) He returned to work on light duty around March or April 2008, when the owner of the business "snapped" on seeing Applicant's arm

[2]Applicant testified that the debts were for his daughter's care. (Tr. 36.) Hospital billing records show that Applicant was the patient. (GE 4.) Applicant incurred charges for his daughter in May 2008, for which he had a $15 copayment. (GE 2.)

[3]Applicant may well have prevailed in a workmen's compensation claim against his former employer. Applicant indicated in an email to Department Counsel on July 8, 2012, that he had $45,000 from a workmen's compensation case. (AE D.)

in a sling, and he threw a paint can at him. Pending a workmen's compensation settlement, Applicant remained an employee until October 2008. (GEs 1, 3.) Applicant made no effort to resume the mortgage payments, and in January 2010, the mortgage holder waived any claim for deficiency against Applicant, who surrendered the deed in lieu of foreclosure. (GEs 3, 6, 7; Tr. 35, 54.)

In June 2008, Applicant moved with his children into a basement apartment in a house rented by his brother and sister-in-law. His sister-in-law leased the home at rent of $1,600 per month. (GE 8.) Applicant had no written lease.[4] (GE 3; Tr. 65-67.) In October 2008, he began working part time as a security guard. (GE 1; Tr. 55.) Around December 2008, water penetrated the basement walls. Applicant contacted the absentee landlord, who he asserts told him to repair the problem and take the cost off the rent. Applicant paid $600 per month in rent from July 2008 through January 2009 to the property owner. (GE 3; AE G.) Copies of the checks confirm they were cashed, but it is unclear by whom in that the checks do not bear the endorsement of the landlord. One check made out to the property owner bears Applicant's endorsement, which he attributes to his own error. (AE J.)

Starting in February 2009, neither Applicant nor his brother paid any rent to the landlord. (GE 8.) Applicant claims he spent between $9,000 and $15,000 for repairs to the property.[5] (GE 3; AEs D, K.) He provided no corroboration by way of contractor bills or proof of payments, but photos of the property showed significant need for repairs. (AEs H, L.) Applicant asserted that his brother vacated the home in February 2009 (GE 3), but according to a news report, Applicant's brother and sister-in-law remained in the property until November 2009, when the property owner issued an eviction notice. (GE 8.)

According to Applicant, on February 23, 2009, he was authorized by the property owner to move upstairs at a rent of $600 per month, and the property owner promised to reimburse him for repair costs.[6] (AEs F, L.) The landlord, who had cashed Applicant's rent

[4]Under § 540:1 of the pertinent state law, every tenancy or occupancy is deemed to be at will, and the rent payable upon demand, unless a different contract is shown. Under § 540:1-a(I), single-family houses rented for residential purposes are considered "nonrestricted property" if the landlord did not own more than 3-single family houses at any one time. Pursuant to § 540:2, the lessor or owner of nonrestricted property may terminate any tenancy by giving to the tenant or occupant a notice in writing to quit the premises in accordance with § 540:3 (requiring 30 days notice) and § 540:5 (requiring service of notice of demand for rent or eviction).

[5]Applicant admits that he did not pay rent, but only for six or seven months before he vacated under court order. (Tr. 82.)

[6]On Monday February 23, 2009, someone (author and recipient redacted in AE F) sent the following message: "The water bill to the amount of $600 was paid today in accordance with RSA 540:2 check #200 and your balance is $35." Later that day, the landlord reportedly sent the following message to Applicant regarding the water bill:

> Thank you for taking care of this, today. You can if you want to move upstairs where i made a mistake on the apartment where you rent now i am sorry for all of the problems i have caused I took out the anger i had with joe and put it on you and for that i am sorry. U can live in the house till you get out and do pay $600 per month for house I will pay all reimbuse [sic] you have pade [sic] for repars [sic]. (AE F.)

checks through January 2009 (AE G), then refused to cover some repair costs, some of which were unrelated to the water damage (AEs H, L; Tr. 66) and not expressly authorized. Around April 2009, Applicant filed a lawsuit in superior court for almost $50,000 against his landlord for the repair costs and for renting him an apartment in a single-family residence in violation of zoning regulations. (GEs 3, 8; Tr. 65-66.)

In October 2009, the landlord began eviction proceedings against Applicant's brother and sister-in-law after they failed to pay their $1,600 monthly rent for eight consecutive months. On November 16, 2009, the court ordered Applicant, his brother, and his sister-in-law to show cause why they should not be evicted. (AE L.) After an eviction notice was issued, Applicant failed to vacate the property. Applicant contested the eviction in court, contending that he had repaired the property in lieu of rent, and that the landlord had told him he would reimburse him for repairs. The landlord denied ever agreeing to pay Applicant for work done on the house. On January 6, 2010, a district court part-time special justice found that Applicant had misrepresented to the court that he had a signed lease executed by the property owner. Since Applicant was not a party to the lease, he had no legal or equitable right as a tenant. The justice ordered Applicant to vacate by January 14, 2010.[7] Under state law, any decision rendered by the court related to a money judgment was limited to a maximum of $1,500 at that time, although either party could file a subsequent claim for any additional amounts. No money was awarded the landlord at that time. (AE K.)

In late January 2010, Applicant withdrew his lawsuit against the property owner. (GE 8.) During his background investigation, Applicant indicated that the justice dismissed his suit in superior court against the landlord because it was the same case as the landlord's dispute. (GE 3.) Applicant's current explanation is that his case against the landlord "fell apart" because an intended witness died of a drug overdose, and the justice and the landlord were friends.[8] (Tr. 37.)

In response to my inquiries about the author of the first message and who bore responsibility for paying the water bill, Applicant indicated the water bill was the landlord's responsibility. (AE I.) Yet, Applicant testified at his hearing that he paid a water bill because the landlord owed "$800 and something." (Tr. 65.) If Applicant sent the initial email of February 23, 2009, to inform the landlord that he had paid the water bill, it shows he was aware of his rights as a tenant under the law. Section 540:2 referenced in the email provides that no tenancy shall be terminated for nonpayment of rent if the tenant was forced to take over the landlord's utility payments in order to prevent utility services, which the landlord agreed to provide, from being terminated. The reply presumably from the landlord is evidence of Applicant's rent being $600 per month. Applicant has no evidence of an agreement other than the email, which he asserts was addressed in court but dismissed by the judge after the landlord claimed he sent it in error. (AE K.) Even if I accept the email as a binding agreement between the parties, it indicates that the landlord would reimburse Applicant what he had paid for repairs, but it does not address whether the landlord would cover any future repairs. Nor does it authorize Applicant to make repair decisions at his discretion. It requires Applicant to continue his $600 monthly payments. Applicant did not present any receipts verifying the nature, cost, or date of repairs. It is insufficient for Applicant to provide the telephone number and address of a contractor to whom he indicates he paid over $9,000. (AE K.)

[7] Shortly before vacating the property, Applicant apparently put a sign in the front yard stating that the landlord owed more than $15,000 in delinquent real estate taxes. The tax collector's records showed that $15,944 in back taxes were owed. (GE 8.)

[8] When asked later by Department Counsel about his lawsuit against the landlord, Applicant testified that he

Applicant paid no rent after January 2009, even though he lived in the house until January 2010, when he vacated under court order. (GE 3.) The property owner subsequently sued Applicant in district court for unpaid rent and for removing two trees from the property without authorization. (GEs 3, 8.) Applicant testified that the landlord wanted $5,000 in back rent, and on the estimate of an arborist, $20,000 to replace the trees. On September 1, 2010, after a hearing on the merits, the justice entered a judgment for the property owner in the amount of $25,000 plus costs (SOR 1.a). The justice decided the landlord was entitled to 12 months of rent at $1,600 per month or $19,200, $20,000 to cure the damage to the trees, and $500 in costs for replacement of a camper and trailer, although the total damage award was limited to the statutory recovery amount of $25,000.[9] (AE E.)

In 2008, Applicant became a member of his town's conservation commission, devoting his spare time to stopping illegal dumping, reporting violations of wildlife conservation laws, and working on the community garden. (GE 9.) In September 2009, Applicant took a second job as a substitute custodian for a school district to supplement his income as a security guard. In January 2011, he began working as an assembler for his defense contractor employer. (GE 1.) By then, medical debts totaling $1,454 from 2006 and 2007 had been placed for collection due to nonpayment. (GE 5.) On December 9, 2010, Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) for a security clearance. Applicant responded "Yes" to 26.e concerning any judgments against him in the last seven years and 26.m concerning whether he had been over 180 days delinquent on any debts in the last seven years. He listed the $25,000 judgment awarded the landlord, who he indicated was abusive. He also listed the delinquent mortgage that was resolved through surrender of the deed. (GE 1.)

"just dropped it," as the landlord's wife was "wanted for a $100,000 fraud case" and others told him he was "nuts" to pursue the landlord, who had reportedly "stiffed everybody . . . owed $27,000 in property taxes." (Tr. 72.) The justice was apparently reprimanded by the state's judicial conduct committee in July 2011 for making inappropriate comments or inquiries to defendants and the local prosecutor in three cases unrelated to Applicant's problems with the property owner. (AE C.)

[9]The evidentiary record does not contain the transcript of the hearing or any explanation from the justice explaining his rationale for his decision. It is unclear what evidence Applicant presented on his behalf before the district court, although Applicant testified as follows:

> When it came time for my attorney to speak, the judge says I don't want to hear about it, you'll receive my decision in the mail . . . . [The opposing attorney] said that [I] failed to pay rent and [I] never did this and he wasn't—he said [I] was an illegal tenant. How was I an illegal tenant, you cashed my checks, and the judge didn't want to hear it. That's what, when we left, my lawyer said something is wrong here. [Attorney name omitted], my attorney, he goes something is wrong here. Then all of a sudden, probably three, four, five weeks later we get a notice in the mail, and he says he ruled against you for 25 grand. I don't know how he ruled against you for 25 grand, he goes there wasn't $25,000 involved. (Tr. 83.)

There is no indication that Applicant's sister-in-law or brother was named as a defendant, even though his sister-in-law was the signatory to the lease, and the justice had previously ruled that Applicant had no rights as a tenant.

A check of Applicant's credit on December 28, 2010, revealed the unpaid medical debts in collection and a $238 utility debt in collection since June 2010 (SOR 1.h). Also, Applicant owed credit card balances of $382 and $2,175 on which he was making payments according to terms. (GE 5.)

On January 18, 2011, Applicant was interviewed by an investigator for the OPM about the $25,000 judgment and mortgage delinquency that led to the loss of his home. Applicant indicated that his attorney advised him not to make any payment on the judgment before the landlord could be reached. Applicant expressed his intent to do whatever his attorney advises. On January 25, 2011, Applicant was re-contacted to complete his interview. When reviewing the financial inquiries on his e-QIP, Applicant was asked to confirm whether he had owed any delinquent debts other than the judgment and mortgage in the last seven years. Applicant responded, "No." He was then informed about the collection debts on his credit report. He disputed their validity, in that the medical debts were to have been paid by workmen's compensation, and he believed he paid the utility debt in full when he vacated the rental unit where the charges were incurred. Applicant expressed his intent to pay any medical bills proven to be legitimate. (GE 3.)

After his interview, Applicant verified the utility debt and all but one of the medical debts (SOR 1.e) on his credit record. (GE 4.) Between July and September 2011, he paid $148 toward his medical debts. (GE 3.) On September 7, 2011, Applicant provided DOHA with evidence of the $148 payments. He also indicated that he had "nothing new" concerning the judgment. Medical debts of $80, $125 (SOR 1.c), $468 (SOR 1.d), $265 (SOR 1.e), and $383 (SOR 1.f) were on his list to be paid. Applicant indicated that a $99 debt for radiology services (SOR 1.i) was paid by workmen's compensation on June 12, 2011. Concerning the $238 utility debt (SOR 1.h), Applicant averred that the current balance was $38 and would be paid in full his next pay period. (GE 2.) On November 12, 2011, Applicant informed DOHA that he intended to have all his old medical debts satisfied by April 2012. (GE 3.)

In January 2012, Applicant paid the debt in SOR 1.c. (GE 4.) On February 14, 2012, DOHA issued an SOR alleging that Applicant owed $1,691 in outstanding collection balances and the $25,000 judgment debt. By then, Applicant owed only two outstanding medical debts, $428.80 (SOR 1.d) and $383.04 (SOR 1.f), and the judgment (SOR 1.a). (GE 4.) Applicant intends to pay the $383.04 in a lump sum and the $428.80 in two payments once he has a $633 federal tax debt paid off. (Tr. 63-64.) When Applicant filed his federal income tax return for 2011 in April 2012, he did not have the funds to pay the taxes owed. The IRS has given him until early August 2012 to pay his past-due tax debt in full. (Tr. 75-78.) As of late June 2012, Applicant had made one payment of $250. (Tr. 63.)

As of July 2012, Applicant had made no payments toward the judgment, reportedly on the advice of his attorney, and he did not intend to make any payments until directed to do so by his lawyer. (GE 3; AE G; Tr. 38, 70-73.) On June 12, 2012, the attorney confirmed his legal representation, but he shed no light on any advice given to Applicant regarding appealing or paying the judgment. (AE A.) The attorney agreed to represent him in return

for some work Applicant had done for him. (Tr. 84.) In an email of July 5, 2012, Applicant informed Department Counsel that his attorney had advised him that since the landlord had moved out of the area, "we should let the issue die."[10] (AE C.)

Post-hearing, Applicant was asked to document his appeal of the September 2010 monetary judgment to the district court. Applicant learned that his attorney, who was not returning his calls, did not file an appeal. (AE K.) There is no evidence that the landlord is attempting to collect the judgment. Should Applicant be required by the court to pay the judgment, he understands that the state would assess an amount for automatic deduction directly from his wages. (Tr. 89.)

Applicant lives with his mother and stepfather. He pays rent of $150 per week. (Tr. 41-42.) A shift worker for the defense contractor, Applicant is paid $16.26 per hour, time and a half on Saturdays, and double time on Sundays. Applicant worked two Sundays and one Saturday in the weeks before his hearing. He plans to put the extra earnings toward his bills. (Tr. 87-88.) Applicant also works one to two days per month on average as an on-call custodian for the school system at $9.75 an hour. (Tr. 47, 89.) Applicant drives a 2004 model-year pickup truck that he owns outright after paying off a $14,924 loan in 2007. (GE 5; Tr. 44.) As of late June 2012, he had two credit card accounts, which were both current, on which he owed balances around $2,200 and $600. (Tr. 44.)

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

[10] According to the landlord and tenant writ (AE L), the landlord was a nonresident of the state when he filed for eviction in November 2009. The landlord, who operates a property management and home improvement business in his state of residence (GE 10), remains a nonresident owner of the property. (GE 11.)

contained in the record. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." *See also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

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

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

Guideline F notes several conditions that could raise security concerns, including AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations." As of January 2011, Applicant owed about $1,150 in medical debt and $238 in utility debt in collection. A $25,000 judgment was issued against him in September 2010 for unpaid rent and property damage. Security concerns are established under AG ¶¶ 19(a) and 19(c).

Concerning the potentially mitigating conditions, AG ¶ 20(a), "the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment," cannot reasonably apply in light of the relatively recent judgment award that has yet to be resolved. The two largest medical debts, which total $811.84, also have not been satisfied.

Applicability of 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 limited to the medical debts arising from Applicant's unforeseen injury at work. That being said, Applicant had a responsibility to ensure that copay and deductible balances were paid by him or by his workmen's compensation benefit. He was awarded around $45,000 for his injury claim and apparently just assumed that all medical expenses would be covered. As for the judgment debt, Applicant had no control over whether his brother and sister-in-law paid their rent. Yet, in the absence of any evidence that the landlord waived rent in return for repairs, it is difficult to find that Applicant acted responsibly, even if I accept that the landlord agreed to pay for repairs made to the premises. Applicant lived in the home without paying any rent from February 2009 to January 2010 after the landlord expressly directed him to continue to pay rent at $600 per month. His obligation to pay rent is legally distinguishable from a claim for reimbursement of repair costs from the landlord. AG ¶ 20(b) does not fully mitigate the financial judgment concerns.

Applicant's satisfaction of the smaller medical debts and the utility debt 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," and AG ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Yet, it is difficult to fully apply either AG ¶ 20(c) or AG ¶ 20(d) in mitigation when he has an outstanding judgment debt of $25,000 against him on which he has made no payments.

AG ¶ 20(e), "the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue," applies to the debt in SOR 1.e, which Applicant denies. The debt appears on Applicant's December 2010 credit report (GE 5) as a collection debt, but the hospital's statement of account show only the debts alleged in SOR 1.d and 1.f are owed. (GE 4.)

Applicant's challenge to the validity of the judgment debt warrants considerable discussion. The property owner's deposit of the rent checks from Applicant between July 2008 and January 2009 could be construed as giving Applicant a tenancy-at-will, even if Applicant lacked the standing of a lessee. Under the state's landlord and tenant statutes, the owner could terminate any residential tenancy by giving 30 days' notice in writing to quit the premises. *See* RSA §§ 540:2, 540:3. If Applicant paid the water bill for the landlord in order to prevent his water from being shut off,[11] his tenancy was still subject to termination because his rental arrearage would have exceeded the $600 or so paid to the water company on the property owner's behalf. Applicant paid no rent between February 2009 and January 2010, when he vacated the premises pursuant to court order. Applicant contends that since the landlord offered to reimburse him for repairs, he was somehow

[11]The evidence as to whether Applicant paid the water bill is problematic. The author and recipient of the email are redacted without explanation. The email indicates that $600 was paid by the author, and that the recipient's balance was $35.00. (AE F.)

justified in not paying the rent. However, nothing in the email of February 23, 2009, cited as proof of the rent by Applicant, gave him the legal right to live in the premises rent free or to repair the premises in lieu of paying rent. At best, it authorized Applicant to remain in the house at rent of $600 per month and promised reimbursement of repair costs that he had already paid. Various photos of the property submitted by Applicant show the premises still in need of repair as of April 2009, June 2009, and January 2010, well after the February 2009 email. Nothing in the email can be construed as a promise by the landlord to pay for future repairs or as authorization for Applicant to make repairs at his discretion. It appears that Applicant made repairs at his own risk.

Applicant was held liable for the full $1,600 per month in unpaid rent, and he was not a lessee. There is no indication that the property owner filed for a judgment against Applicant's sister-in-law for the unpaid rent from February 2009 until November 2009, when the landlord and tenant writ was issued for failure to vacate by November 16, 2009. Nonetheless, claims of the district court justice's bias against him were not established by substantial evidence, which the DOHA Appeal Board has defined as "such relevant evidence as a reasonable mind might accept as adequate to support such a conclusion in light of all the contrary evidence in the record. Directive ¶ E3.1.32.1. 'This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence.' *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620 (1966)." *See e.g.*, ISCR 07-15434 (App. Bd. Feb. 24, 2009.)

Applicant had an attorney that failed to appeal the judgment on his behalf. (AE A.) Applicant has not paid the attorney, who apparently took the case in return for repairs made by Applicant. I cannot speculate as to the extent of the lawyer's professional responsibility to Applicant, who, if Applicant is to be believed, told him not to pay the judgment. Applicant indicated on July 5, 2012, that his attorney advised him that the property owner had moved away from the area, and they should let the issue die. (AE C.) Yet, as of August 19, 2012, Applicant appeared to be surprised at finding out that this attorney had "NEVER filed an appeal as he claimed he would." (AE K.) Having filed a legal complaint against the landlord in the past, Applicant knew enough about the legal process to understand that he had an obligation to ensure that the judgment was either being appealed or being repaid. Photographs of property deterioration and repair do not satisfy Applicant's burden in overcoming the financial concerns raised by an outstanding financial judgment of $25,000 that is yet to be resolved.

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).[12]

[12] The factors under AG ¶ 2(a) are as follows:

> (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the

Applicant allowed several medical debts to go to collection. Yet, his medical debts were not discretionary, and he has satisfied many of them. The greater concern is raised by his ongoing disregard of the $25,000 judgment debt. Court records and a news report indicate that Applicant and other family members resided in the home without paying rent for ten months before the court granted possession to the property owner. Applicant contested his eviction without success. The judge found that Applicant misrepresented to the court that he had an agreement with the property owner that granted him legal tenancy.

Applicant's claims of a vindictive landlord, who reneged on promises to cover repair costs, and of a biased judge, cannot be summarily dismissed. The judge held Applicant responsible for the entire amount of the back rent, despite evidence that Applicant's brother and sister-in-law also resided there until November 2009, and she was on the lease. Yet, as outlined above, the evidence proffered by Applicant is problematic in several aspects (email redacted without explanation; Applicant-endorsed check deposited to property owner's account; repair expenses unsubstantiated by bills or payments on accounts; attorney's failure to appeal judgment; conflicting testimony from Applicant about whether he had been in arrears on rent and about the circumstances of his lawsuit against the property owner). Photographs of the premises are not enough to legally justify his ongoing disregard of the judgment. Applicant presented no corroborating evidence that would sustain a finding that he relied reasonably to his detriment on legal advice to ignore the judgment. It is not enough to merely assert that his attorney is not returning his calls.

The evidence does not show the property owner in a positive light. He owed $15,944 in back taxes when Applicant was evicted. He assented to Applicant's tenancy if he cashed the rent checks from Applicant covering the months from June 2008 through January 2009, and several of the photos from Applicant substantiate possible code violations. However, the property owner is not applying for a security clearance, and his eligibility is not before me. I can only base a decision on the evidence presented, which includes an outstanding financial judgment of $25,000 plus costs, a previous mortgage default, and a recent IRS debt that had to be repaid by early August 2012 in preference to him resolving his two largest medical debts in collection. Based on the evidence before me and the adjudicative guidelines that I am bound to consider, I cannot find that it is clearly consistent with the national interest to grant Applicant eligibility for access to classified information 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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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.

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	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 grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Elizabeth M. Matchinski
Administrative Judge