DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 11-04088
	)	
	)	
Applicant for Security Clearance	)	

Appearances

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

11/02/2012

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant and his spouse owe over $40,000 in delinquent debt incurred primarily in the construction of a new home that they lost to foreclosure before it was finished. Their mortgage lender paid the delinquent taxes, around $49,925, on the property and charged off their loan deficiency of $71,055. Their financial difficulties were due in part to a loss of Applicant's business income, but the concerns about Applicant's financial judgment are not fully mitigated. Clearance denied.

Statement of the Case

On April 25, 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 answered the SOR allegations on May 14, 2012, and he requested a hearing. On July 12, 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 September 7, 2012, I issued a notice scheduling a hearing for September 26, 2012.

I convened the hearing as scheduled. Seven Government exhibits (GEs 1-7) were admitted without objection. Department Counsel also submitted a chart that was marked as a hearing exhibit, but considered as an adjunct to his oral closing argument. Applicant submitted eight exhibits (AEs A-H), which were admitted without objection, and he testified, as reflected in a transcript (Tr.) received on October 3, 2012.

I held the record open until October 17, 2012, for Applicant to submit additional exhibits. On October 10, 2012, Applicant forwarded by email evidence of contacts with his creditors (AE I), including letters to them (AE J) and a utility account statement (AE K). On October 16, 2012, Applicant submitted three additional exhibits: a settlement offer (AE L); a redemption deed (AE M); and a letter from the local tax collector (AE N). On October 17, 2012, Applicant submitted an email addressing his intent to resolve his debts (AE O). Department Counsel filed no response by the respective deadlines, so the documents were admitted into the record.

Findings of Fact

The SOR alleges under Guideline F that Applicant filed Chapter 13 bankruptcy petitions in March 2010 (*see* SOR 1.b) and November 2011 (SOR 1.a), which were dismissed before several debts were paid. As of April 25, 2012, Applicant allegedly owed 18 delinquent debts totaling $173,403.14 (SOR 1.b(1)-1.b(12), 1.c-1.h). In his SOR response, Applicant admitted the bankruptcy filings as well as the debts in SOR 1.b(3), 1.b(11), 1.d, and 1.h. He denied the other alleged debts without explanation other than to indicate there were significant errors and mitigating circumstances. After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 52-year-old high school graduate with some community college credits. (GEs 1, 2.) He owned and operated a small business out of his home from January 1997 to October 2010. He and his spouse have been married since August 1986, and they have three children: sons ages 23 and 18 and a daughter age 22. (GE 1.) Due to the economic downturn, Applicant's business struggled financially starting in mid-2007. (GE 2.) He eventually turned control over the business to his son and began working as a pipefitter for a defense contractor in March 2011. (GE 2; Tr. 46.) Applicant now works in the planning department, although in September 2012, he was asked to interview for a management position as second-shift supervisor in his previous department. Applicant does not need a

security clearance to be a planner, although he would require a secret-level clearance to be a supervisor pipefitter. (Tr. 59.)

Applicant's home business involving tennis equipment (Tr. 34.) was growing at such a pace around 2002 (net income around $7,000 to $8,000 monthly) to warrant moving operations from his basement. (Tr. 99.) Also, Applicant's spouse needed to provide shelter for her elderly parents in the near future. Instead of renting warehouse space at $1,500 per month for his business and adding an in-law apartment to their home, Applicant and his spouse decided on new construction. (Tr. 100-01.) Around November 2002, they sold their home.[1] With the proceeds from the sale and some savings, they paid $225,000 cash for an undeveloped, not sub-dividable 11.37 acre lot. (AE C; Tr. 102.) They took out a construction loan of $200,000 from a local bank (bank A) to build a 1,200 sq. ft. structure to house his office and her parents on their new property. (GEs 2, 5.) Under the terms of the loan, Applicant and his spouse put up the first $40,000. On completion of the first stage, bank A disbursed the funds to start the second phase of the construction. With his business income, her employment income as a special education teacher's assistant (Tr. 35.), and some reliance on personal credit during the final quarter (Tr. 31.), Applicant and his spouse were able to complete construction of the office/in-law apartment in November 2004. They moved into the building pending construction of a 3,600 sq. ft. home that they planned for their primary residence on the property. Construction on the home began in March 2005. (Tr. 23-25.)

In June 2005, Applicant and his spouse took out a joint home equity loan of $362,000 from bank B to finance the construction of their new house. They exhausted their credit line with bank B and opened a new joint mortgage of $535,000 with bank A in May 2006.[2] After paying off their equity loan with bank B, they had about $215,000 to finish the construction. They incurred some unexpected costs, including about $20,000 for blasting. By May 2007, they had spent the fourth disbursement of their construction loan and had used personal credit cards to pay for materials and other building expenses. Over budget and needing $25,000 to progress to the certificate of occupancy and about $50,000 to fully complete the house, Applicant stopped paying on his credit card account in SOR 1.h in July 2007. His account was later placed for collection. (GE 5.) Around $3,038 in credit card debt was charged off by the lender in SOR 1.d for nonpayment after October 2005. (GE 4.)

Under the terms of their construction loan, any undisbursed funds at the end of the 12 months were to be returned to the bank and then applied to their mortgage. At the bank's discretion, the funds were to be made available to Applicant and his spouse at a later date, if needed. (AE A; Tr. 28-29.) Bank A chose to deposit the funds for the final

[1]Applicant told DOHA in June 2011 that he and his spouse sold their home and purchased the property in November 2001. (GE 2.) He testified that he bought the property in November 2002. (Tr. 23.)

[2]Applicant had apparently paid interest only on the disbursements of the construction loan. At the end of the 12 months, the loan became an adjustable rate five-year mortgage. He testified that funds not disbursed under the construction loan terms were supposed to be applied to the mortgage loan balance and then deducted from the total amount of the mortgage. If he needed funds in the future, he could request them from the bank, although it was apparently at the bank's discretion whether to disburse the funds. (Tr. 26-28.)

disbursement into an escrow account to guarantee that construction proceeded to occupancy. Applicant and his spouse continued to make monthly payments on the $535,000 loan through 2007, including on the funds in escrow that had not been disbursed. (Tr. 26-30.) Applicant felt he was in a "catch-22" situation in that they needed the funds to get the house to occupancy. (Tr. 29-31.) By November 2008, bank A was threatening to foreclose on the mortgage loan because of their failure to obtain the certificate of occupancy for the house. Applicant and his spouse contested the action as neither the mortgage note nor the construction loan agreement specified a time within which they had to obtain the certificate of occupancy. On November 19, 2008, Applicant requested that the funds held in escrow be applied to the mortgage and that all principal and interest paid to date on those funds be refunded to him. (AE A.)

By the spring of 2009, Applicant's business income had fallen by half because of the economic downturn. Applicant and his spouse felt they had no choice but to continue to finish the house. They continued to rely on their personal credit cards to buy construction materials, such as insulation and plywood, with the intent of paying their credit card debt when the bank released the last installment of their loan. (Tr. 29-32.) They were also seriously behind in their local real estate taxes (SOR 1.b(7), 1.b(8)). Then, in April 2009, the IRS filed a tax lien against Applicant for $5,171.33 in alleged unpaid income taxes from 2003 (SOR 1.f). (GE 5; AE D.) In October 2010, a construction creditor (SOR 1.c) obtained a $5,500 judgment against Applicant. (GEs 3, 4.)

In an effort to save their home, Applicant and his spouse filed a joint Chapter 13 bankruptcy on March 17, 2010. (Tr. 34.) Under a plan proposed in May 2010, they were to pay $450 per month for 60 months plus their federal income tax refund. Their unsecured creditors were to receive 27%. Bank A objected to the plan due to their mortgage and tax arrearages. An amended plan was filed in July 2010, to which bank A again objected. In mid-August 2010, bank A withdrew its objections to confirmation after they paid the arrearages. Under the amended plan, Applicant and his spouse were supposed to pay the bankruptcy trustee $875 per month to resolve $30,440.87 in allowed unsecured claims ($3,066.03 on SOR 1.d, $16,749.37 on SOR 1.h, $5,127.62 on SOR 1.b(3), $3,088.27 on SOR 1.b(5), and $2,319.58 on SOR 1.b(6)).[3] (GEs 2, 7.) They could not keep up with the payments. They had anticipated that she would be employed during the summer by the school district based on previous years, but the school district did not fund her position. (Tr. 35.) Bankruptcy records show that as of December 2010, Applicant was also awaiting $13,000 in invoiced payments from his business clients. (GE 4.)

On November 22, 2010, Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP). He disclosed that he filed for Chapter 13 bankruptcy involving an estimated $18,000 in debt. (GE 1.) On February 8, 2011, the bankruptcy was dismissed because he and his spouse were in arrears $4,895.75 in their payments to the trustee. Of the $2,579.25 paid by them, only $273.63 had been disbursed to their creditors. (GE 7.)

[3]The debt alleged in SOR 1.b(6) was for a bookcase built into the house. (Tr. 73.) Applicant denies he held a credit card with the lender, although it may have been his spouse's account. (Tr. 46.) The debt does not appear on his December 2010 (GE 5), May 2011 (GE 4), or April 2012 (GE 3) credit reports.

Shortly after their bankruptcy was dismissed, Applicant received some payments from the customers of his business. In June 2011, Applicant and his spouse entered into a forbearance agreement with bank A. The bank gave them six months to complete construction, provided they continued to pay on their loan. After they made a mortgage payment around $3,202 for July 2011,[4] bank A notified them that they had violated the forbearance agreement. According to Applicant, the bank expected monthly payments in excess of $10,000 every month for six months to cover the mortgage, delinquent attorney fees, and past-due real estate taxes, even though this payment amount was not specified in the forbearance agreement. When the bank's attorney would not accede to their plan to sell the property to pay off the mortgage, Applicant and his spouse decided to stop making the payments to rehabilitate their loan. Bank A reinitiated foreclosure proceedings because of their default. (Tr. 39.)

Intending to list the home for sale in spring of 2012 and lacking alternative living arrangements, Applicant and his spouse filed for Chapter 13 bankruptcy on November 9, 2011, to forestall the foreclosure. (Tr. 40.) They listed 11 creditors owed unsecured debt totaling $32,804.85 (SOR 1.b(1),[5] 1.b(4)[6]-1.b(6), 1.b(9)-1.b(12)[7]). In addition to the $511,479 mortgage owed bank A, they listed secured debt of $3,777.82 to a concrete company (SOR 1.b(2)), $5,170 to a bank (SOR 1.b(3)), and delinquent local real estate taxes and related fees totaling $49,925.47 (SOR 1.b(7)[8]-1.b(8)). Bank A objected, and on December 7, 2011, the judge denied Applicant and his spouse's request to stay their mortgage obligation. On January 5, 2012, their bankruptcy was dismissed at their request

[4]Applicant testified that he made a $5,000 tax payment to the town (Tr. 37.) as well, but he provided no evidence to confirm the payment.

[5]Applicant testified (Tr. 71.) and his December 2010 credit report (GE 5) confirms that he was an authorized user on his spouse's credit card account with the lender.

[6]Applicant's credit reports (GEs 3-5) do not include the $1,773 debt alleged in SOR 1.b(4), which Applicant now denies. The creditor was reportedly the credit card processor for his business, and it involved a false claim from a customer concerning a tennis racquet re-stringing machine. Applicant testified, with no evidence to the contrary, that the charges were reversed. (Tr. 71-72.)

[7]Applicant included among his unsecured claims a $400 debt owed to a telephone provider (SOR 1.b(10)) and a $713 credit union debt (SOR 1.b(12)), which he now denies. (Tr. 73-74.) The telephone account is listed on his credit reports (GEs 3-5) as a collection debt with a zero balance included in bankruptcy. It was reportedly opened in November 2004, and he told an Office of Personnel Management investigator in December 2010 that he was a customer of the telephone company. (GE 2.) The other debt was not listed on his credit reports. He has not explained why he listed the debts on his and his spouse's joint bankruptcy if they were invalid debts. The delinquent credit card debt of $2,275.55 (SOR 1.b(11)) was his spouse's account used for construction costs. (Tr. 73-74.) Exhibit L substantiates that the creditor in SOR 1.b(6) is the original merchant and that Applicant's spouse was lent credit through the credit union in SOR 1.b(11), so they are the same debt.

[8]The state housing and mortgage finance corporation acquired an interest by tax sale deed June 11, 2009. Under a program for persons struggling to pay their real estate taxes, the town sold the asset to the state housing authority, which then gave the debtors five years to repay their delinquent taxes. (Tr. 77.) On May 3, 2012, the state corporation conveyed to Applicant and his spouse title to the property through a redemption deed because the tax debt had been paid. (AE M.)

before any plan was confirmed. (GE 6.) Since their mortgage had been excluded from the bankruptcy, they saw no sense in proceeding with the bankruptcy. (Tr. 40-41.)

In February 2012, Applicant and his spouse put their property on the market for $695,000. (Tr. 41.) On February 18, 2012, a buyer put down a $1,000 deposit on an offer to purchase for $675,000, with closing to be held within 90 days. The offer was contingent on Applicant and his spouse spending up to $12,500 to complete construction to obtain the certificate of occupancy before closing. (AEs B, H.) Applicant alerted bank A of the purchase agreement. He estimated a shortfall to the bank around $30,000. (Tr. 44.) On February 23, 2012, he asked the bank to postpose the foreclosure, which was scheduled for March 2012, because his mother-in-law was in hospice care at their home and could not be moved. He expressed a willingness to resume monthly mortgage payments to the bank as they worked through the sales process. (AE B; Tr. 42.)

On March 19, 2012, bank A notified Applicant that his request for a short sale of the property at $675,000 would be approved subject to several conditions, including receipt by the bank from the buyer of a non-refundable deposit of $67,500 no later than March 22, 2012, with the deposit to be retained by the bank if the deal fell through, and closing to occur no later than 60 days from March 23, 2012. The buyer walked away from the offer. Applicant advised the bank on March 22, 2012, that its proposal lacked seriousness, so the bank could proceed with the foreclosure. Bank A was the high bidder at around $570,000 in the foreclosure sale. (AE H; Tr. 47-50.) The bank charged off a $71,055 balance on their delinquent loan (SOR 1.e). Applicant owed around $512,000 on the loan, but there were also delinquent taxes and other fees that had to be paid. (GE 3; Tr. 80.) On August 23, 2012, the bank sold the home for $605,000. (AE C; Tr. 50-51.) Applicant submits that the debts of $3,777.82 (SOR 1.b(2)) and $5,500 (SOR 1.c) for construction materials were paid in the foreclosure (Tr. 71, 74.), but he provided no corroborating documentation showing those debts have been paid.

While still living in the smaller building on the property with his family, Applicant did not pay the mortgage from August 2011 through March 2012, when the bank foreclosed. Available funds went to rent a home. In April 2012, Applicant and his family (spouse, two sons, and father-in-law) moved into a rented house at a cost of $2,000 a month. (Tr. 88-89.) Due to their poor credit, they had to pay $11,000 upfront (first three months and last month of rent, security deposit, and an extra $1,000 for their pet). (Tr. 91-94.)

In May and June 2012, Applicant and his spouse received statements from bank A about the escrow account on the mortgage. In July 2012, Applicant approached the bank about releasing the approximately $32,000 in the escrow account because they had paid interest on the amount. On July 31, 2012, bank A informed him that the funds had been withheld from the construction mortgage proceeds to ensure that he completed the work necessary for the certificate of occupancy. Since he did not complete the work and had a deficiency balance on the loan, the monies would not be released to him. (AE H; Tr. 54-57.) In September 2012, Applicant contacted the state attorney general about whether the bank committed fraud by putting the money into an escrow account and forcing him and his spouse to pay interest on the funds ("That they would foreclose on me for being short 50

cents on a payment but yet something like that seems wrong."). Applicant was advised to contact an attorney. He cannot afford to retain legal services at this time. (Tr. 57.)

As of August 23, 2012, Applicant owed a final bill of $38.27 for electric services at the foreclosed property (SOR 1.b(5)), after paying $58.03 in March 2012 and $112.34 on May 10, 2012. (AE F.) Applicant testified that he satisfied the debt just prior to his hearing (Tr. 61-65), although payment did not clear his account until October 8, 2012. (AE K.)

On August 22, 2012, the IRS released the federal tax lien that was filed against Applicant in April 2009 for 2003 (SOR 1.f). (AE D.) By June 2011, Applicant had re-filed his return for tax year 2003, which showed that he received a refund for that year. (GE 2; Tr. 61.)

On September 24, 2012, Applicant was issued a late tax notice from the town of $48.65 for 2012. (AE E.) As of October 15, 2012, Applicant owed no outstanding real estate taxes on his former residence (SOR 1.b(8)) or motor vehicle taxes to the town (SOR 1.b(9)). (AE N.) He had made no payments toward the $71,055 that the bank wrote off in the foreclosure of his mortgage loan. Applicant does not dispute that he may be legally liable for the debt, but he objects in principle in that the bank sold the property "below fair market value."[9] (Tr. 79.) He has not been pursued by bank A for the charged-off balance. (Tr. 81.)

Applicant has made no payments toward his credit card debts of $3,038 (SOR 1.d) and $16,598 (SOR 1.h), or his spouse's credit card debts in SOR 1.b(1) and 1.b(3), which were incurred primarily for construction costs in an attempt to obtain the certificate of occupancy. (Tr. 74, 86.) As of June 2010, he owed a collection balance of $1,005 to the cable television company (SOR 1.g). His son's former roommate took the converter box, leaving Applicant responsible for the debt. (Tr. 75, 85.) As of late September 2012, Applicant had not paid the debt. On September 30, 2012, Applicant sent letters to the creditors in SOR 1.b(1)-1.b(4), 1.b(7), 1.b(12), 1.c-1.d, and 1.g-1.h requesting verification of outstanding balances or proof of satisfaction. (AE J.) In response to an October 9, 2012 settlement offer from the agency collecting the $2,355.24 balance of his spouse's delinquent debt in SOR 1.b(6) (duplicated in SOR 1.b(11)), Applicant paid the first of eight $191.36 payments. (AEs I, L.) Applicant had about $2,000 in savings, but little to nothing in checking account deposits as of late September 2012. (Tr. 95.) He paid his younger son's first semester tuition of $1,100 at a community college. (Tr. 96.) Applicant estimated he had around $500 in discretionary income each month. (Tr. 96.) He intends to establish repayment plans with his remaining creditors, with the exception of the mortgage delinquency (SOR 1.e), which he expects will be resolved only through filing a civil suit against the bank. (AE O.) He is hoping to earn more income as he progresses with his employer. (Tr. 97-98.)

[9] For real estate tax purposes, the value of the property was assessed at $632,200 for 2011, although as of August 2012, the average listing price for similar homes in the neighborhood was $545,900. (AE C.)

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:

> 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 his spouse started with a relatively affordable $200,000 construction loan to build the more modest of two buildings on an 11.37-acre property bought with cash for $225,000. After they finished the 1,200 sq. ft. office/in-law apartment, they took on home equity debt around $362,000 to construct a 3,600 sq. ft. home. When they exhausted their home equity line of credit, they returned to their original lender (bank A) to finance the remaining construction with a $535,000 loan. In addition to taking on a sizeable monthly mortgage payment ($3,202), they accrued over $31,000 in personal credit card charges (SOR 1.b(1), 1.b(3), 1.b(6), 1.d, and 1.h), including $19,636 on Applicant's credit accounts (SOR 1.d and 1.h), for construction materials and other expenses. They failed to pay around $49,925 in real estate tax debt on the property (SOR 1.b(7) and 1.b(8)). The fifth disbursement of loan monies, with which they planned to repay their mounting delinquent credit card debt and other construction expenses totaling $9,277.82 (SOR 1.b(2) and 1.c), was instead held by the bank in an escrow account until they obtained the certificate of occupancy. By 2010, Applicant and his spouse could not afford to pay both the mortgage and fund the construction to the certificate of occupancy. The Chapter 13 bankruptcy filed in March 2010 to save their home (SOR 1.b) was dismissed because they fell behind $4,895.75 in their payments. In June 2011, the bank agreed not to foreclose on their loan for six months, but Applicant and his spouse were considered in default of the forbearance agreement for failing to pay toward the arrearage. They had a second Chapter 13 bankruptcy dismissed when the judge refused to grant them a stay of their mortgage obligation. In March 2012, a potential buyer walked away from his offer when the bank demanded a non-refundable deposit of $67,500 for any short sale. The bank foreclosed on the property, charging off a deficiency balance of $71,055 (SOR 1.e). AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations," are established because of the record of delinquent accounts in SOR 1.b(1)-1.b(3); 1.b(5)-1.b(9); 1.b(12); and 1.c-1.h. While Applicant's spouse is legally responsible to repay the debts in SOR 1.b(1), 1.b(3), 1.b(6) (1.b(11) same debt), and 1.b(12), they were incurred with Applicant's knowledge and for their joint benefit. Moreover, the funds to repay the debt are likely to come from their joint household income.

The Government failed to establish its case for the additional delinquencies in SOR 1.b(4), 1.b(10), 1.b(11) and 1.f. Concerning the $1,773 debt in SOR 1.b(4), Applicant's unrebutted testimony is that the charges were reversed because he was able to show that the customer received the product at issue. Applicant disputes the Verizon debt on the basis that he does not have an account with the creditor. While he inexplicably told the OPM investigator that his account was current, his available credit reports show that the debt went into collection, but they also show no outstanding balance. SOR 1.b(11) is a duplicate of SOR 1.b(6) and does not represent an additional balance. The IRS lien (SOR

1.f) was released after Applicant proved he was entitled to a refund for the tax year at issue. Mitigating condition 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 some, but not all, of the debts.

Concerning the established delinquencies, 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. Applicant has made no payments toward his credit card debts in SOR 1.d and 1.h totaling $19,636, his spouse's credit card debts for the construction, or the $1,005 cable debt incurred on his son's behalf. The mortgage deficiency of $71,055 is unresolved. There is no corroboration for his claim that the $3,777.82 debt owed a concrete company (SOR 1.b(2)) and the $5,500 judgment for construction materials (SOR 1.c) were paid by bank A through the foreclosure process. (Tr. 74-76.)

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 part. The decline in income from Applicant's tennis equipment business was not reasonably foreseen when he and his spouse purchased the property and began construction. The economic recession is a fact proper for administrative notice, and the Government did not challenge Applicant's testimony that around 2008, his business income fell to half of what it had been. However, it is difficult to conclude that Applicant exercised sound financial judgment in several aspects. The evidence suggests that he and his spouse took on more debt than they could reasonably afford in the construction of a new home. They used the equity in their old home to buy 11.37 acres of land, and borrowed $200,000 to construct a 1,200 sq. ft. building for an office and in-law apartment. After they finished that building, they took out a home equity loan of $362,000 to build their house. They had only about $215,000 to finish their 3,600 sq. ft. home after they paid off their previous loan. In May 2006, they took on a $535,000 loan obligation from bank A when his business income fluctuated. At $7,000 to $8,000 per month initially, he brought in less than $100,000 a year. As an aide in the local school system, Applicant's spouse is not likely to have added much to their household income. There is no evidence that they had significant savings or other sources of income to cover construction costs beyond the construction loan disbursements. Applicant had to rely on consumer credit cards to pay for construction costs. By May 2007, they were over budget $25,000, and he owed sizeable credit card debt on the account in SOR 1.h. His credit card account with the lender in SOR 1.d was $3,038 past due with no activity after October 2005. Applicant provided no specifics showing that all of his expenditures, including for the new construction, were reasonable in light of his income.

Bankruptcy is a legal means to address debts, but Applicant's and his spouse's Chapter 13 filing in March 2010, and their subsequent failure to remain current in their payments to the trustee, show the extent to which they were underwater financially.

Applicant attributes their delinquency to the loss of his spouse's income opportunity that summer (Tr. 35), but bankruptcy records show that Applicant and his spouse were in arrears on their mortgage payment that fall, when she would have been employed. Applicant apparently expected around $13,000 in income invoiced to clients of his business that had not materialized by December 2010. He may not have been able to control when customers paid their bills, but it is not clear that Applicant did all that he could have to comply with the terms of the bankruptcy.

Applicant asserts that the bank violated the construction loan by retaining what should have been the final disbursement that he needed to finish the construction to the certificate of occupancy and pay off accrued credit card debt. AG ¶ 20(b) could be triggered if the bank violated the terms of the construction loan, or otherwise acted illegally to Applicant's detriment. The bank does not dispute that it withheld the funds from the construction mortgage proceeds to ensure that Applicant completed the work needed for occupancy. Applicant's evidence shows that by May 2007, he and his spouse had exhausted their loan proceeds. They still needed $25,000 to the certificate of occupancy and about $50,000 to fully complete the house. As of February 2012, they were still about $12,500 short of the certificate of occupancy. The slow pace of construction could well have been a factor in the bank's decision to withhold the funds. Without the mortgage loan agreement available for review, I cannot determine whether the bank violated the terms of the loan, either by withholding the funds in an escrow account, or by not reducing the mortgage debt by the amount of funds not disbursed to Applicant. Applicant asserts that he and his spouse "probably paid $4,000 or $5,000 interest" on funds they could not access. (Tr. 54.) Should Applicant prevail in any civil action against the bank for requiring him to pay interest on the funds in escrow, the amount still in escrow (around $32,000) is short of his deficiency balance, given that the bank also had to pay around $49,925 in back taxes on the property (SOR 1.b(7) and 1.b(8)).

Even if the bank does not pursue him for the charged-off balance in SOR 1.e, the inordinate delay in addressing his and his spouse's known credit card delinquencies is also not fully mitigated. Applicant made no effort to address the credit card debts from August 2011 to September 2012, even though he had steady income from his defense contractor employment. While $11,000 in accumulated assets went to rent a house in April 2012, Applicant was not precluded from contacting his creditors during the previous six months. AG ¶ 20(b) also does not mitigate his failure to make any payments on their delinquent debts after April 2012, when they reportedly have $500 in net household income each month.

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," are minimally established. In March 2012 and May 2012, Applicant made payments of $58.03 and $112.34 to reduce the delinquency owed for utility services to $38.27 (SOR 1.b(5)). He paid the debt just before his hearing. Applicant testified that he made a $5,000 tax payment to the town around July 2011. Even so, he and his spouse had not paid their property taxes for some time, as evidenced by the

$49,925.47 in secured tax debt listed on their November 2011 Chapter 13 bankruptcy. The taxes were apparently paid by the bank after the foreclosure. (AE N.) So, as to the majority of the tax debt, there is limited evidence of good-faith effort on his part. Applicant is credited with attempting to resolve their debt through a short sale of the property. The bank made it very difficult by demanding a non-refundable deposit of $67,500, but there is also no guarantee that Applicant would have been able to obtain the certificate of occupancy within the 90 days set for closing based on his history and no evidence that he had the estimated $12,500 to fund needed construction.

Applicant intends to establish repayment plans on his outstanding debts. His post-hearing inquiries of his creditors to verify his debts and his payment of $191.36 toward settlement of the debt in SOR 1.b(6) are evidence of his good intentions going forward, but he has not made sufficient payments to fully apply either AG ¶¶ 20(c) or 20(d).

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).

Applicant and his spouse's financial problems are directly attributable to the construction of a new home. They spent most of their assets upfront, including $225,000 cash for an 11.37 acre lot, and then borrowed for the construction. While Applicant may not have foreseen the downturn in the economy, he can reasonably be expected to know what the estimated property taxes would be on a lot of that size. He failed to budget for the taxes or for cost overruns on the construction. Forced to rely in part on credit cards to cover expenses, Applicant irresponsibly chose not to pay them until such time as he received the final disbursement of construction mortgage proceeds from the bank. He has also not paid the $1,005 cable bill.

Applicant and his spouse have paid dearly for their financial decisions. In addition to the negative impact on his credit, they used all the equity in their previous residence. They are legally liable for their consumer credit debt and perhaps the deficiency of their mortgage loan as well. At foreclosure, the bank wrote off $71,055. While the bank sold the house for $605,000 and Applicant owed $512,000 on the loan, there were additional costs paid by the bank, such as the past-due real estate taxes, attorney fees, and the costs to obtain the certificate of occupancy.

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 assessing whether Applicant has taken significant actions to implement his debt resolution plan, recent payments totaling $208.64 to the utility and $191.36 on the delinquent debt in SOR 1.b(6) are not sufficient to establish a meaningful track record from which I could reasonably conclude that his financial problems are likely to be resolved any time soon. At some future

date, Applicant may be able to overcome the security concerns raised by his demonstrated financial irresponsibility. For the reasons noted above, 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:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant[10]
Subparagraph 1.b(1)-1.b(3):	Against Applicant
Subparagraph 1.b(4)-1.b(12):	For 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:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

_____
Elizabeth M. Matchinski
Administrative Judge

[10]A favorable finding is returned as to SOR 1.a because bankruptcy is a legal option to resolve debts, and Applicant and his spouse had their case dismissed voluntarily without prejudice.