



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



In the matter of: )  
)  
) ISCR Case No. 11-07021  
)  
)  
Applicant for Security Clearance )

**Appearances**

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

03/25/2013

**Decision**

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant and his spouse, who have seven children all living at home, took on a sizeable mortgage in 2005 that they struggled to pay on time. In December 2010, the servicer for their mortgage foreclosed. Applicant has been contesting the foreclosure in court since 2011, contending that the loan servicer had no security interest as of a January 14, 2008 tax sale. Applicant has yet to resolve a \$1,205 credit card debt past due since 2006 or a \$20,326 personal line of credit balance delinquent since January 2009, and he was behind on his utility bills as of late December 2012. Even if his challenge to the foreclosure is successful, he has yet to demonstrate that he can handle his financial obligations responsibly. Clearance denied.

**Statement of the Case**

On July 19, 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Applicant's secret-level security clearance was revoked for failure to file a timely response. On September 27, 2012, he asked the Defense Office of Hearings and Appeals (DOHA) to reopen his case. He missed the deadline to respond. His request was granted, and on October 2, 2012, Applicant answered the SOR allegations and 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. Before any evidence was introduced, Department Counsel stipulated that the debts in SOR 1.a and 1.b had been paid by Applicant. Eight Government exhibits (GEs 1-8) and six Applicant exhibits (AEs A-F) were admitted without objection. Applicant also testified, as reflected in a transcript (Tr.) received on January 31, 2013. At Applicant's request, I held the record open initially for two weeks for Applicant to submit additional documentation, including about the foreclosure of his mortgage. On February 20, 2013, Applicant requested an extension, until March 1, 2013, which was granted without objection.

On March 1, 2013, Applicant submitted a letter from the attorney handling his challenge to the mortgage foreclosure. The exhibit was admitted as AE G without objection. In his forwarding correspondence, Applicant indicated that he had requested additional information from the attorney. I extended the deadline to March 12, 2013, for any further submissions, but no additional exhibits were received.

### **Findings of Fact**

The SOR alleges under Guideline F that as of February 28, 2012, Applicant owed two medical debts in collection, of \$139 (SOR 1.a) and \$100 (SOR 1.b). As of July 19, 2012, he owed a \$1,205 credit card debt (SOR 1.c) and a \$20,326 past-due loan balance (SOR 1.d). Applicant was also allegedly in debt (amount not listed in SOR) on a mortgage account foreclosed in November 2011 [sic] (SOR 1.e). When he answered the SOR, Applicant indicated that he still owed the debts in SOR 1.a-1.c. The loans in SOR 1.d and 1.e were in legal proceedings. He acknowledged that he and his family "do tend to live beyond [their] means for the most part," and that a few minor setbacks had caused them "to play catch up." After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 47-year-old high school graduate with some technical training. (GE 1; Tr. 38.) He served on active duty in the U.S. military from June 1985 to July 1991, and he

held a secret-level security clearance. He then served in the National Guard from August 1991 to November 1994. (GEs 2-3; Tr. 44.) From November 1996 to June 2002, Applicant worked as a production coordinator for a commercial radiation systems company. For the next six months to a year, he worked as a laborer/carpenter's apprentice for a local builder.<sup>1</sup> Since May 2003, he has been employed with a secret clearance by a defense contractor, initially as a production control planner and since July 2008 as a configuration management analyst. In January 2006, Applicant enlisted in a different branch of the Guard from his previous Guard service. He has continued to serve part-time (one weekend per month and 15 additional days per year) while holding his full-time job with the defense contractor. (GEs 1, 5; Tr. 45.)

Applicant and his first wife divorced in July 1989 after a short-lived marriage. They had one son, who was born in February 1988. In March 1991, Applicant married his current spouse. Applicant and his second wife have seven children, who range in age from 8 to 21, and live with them. (GEs 1, 3; Tr. 39.) Their 21-year-old son is taking off a semester from college and working. Their 19-year-old son has not yet started college due to a medical condition. His medication costs them between \$100 and \$150 a month. (Tr. 40-41.)

In October 2001, Applicant and his spouse bought their home. They took on a \$147,584 mortgage, to be repaid at \$952 per month. They made their payments on time. Around October 2003, they took out a construction loan of \$58,000 to add on to their home because of their growing family.<sup>2</sup> (GEs 5, 7; Tr. 25.)

On starting his work with his current employer, Applicant completed and certified a Security Clearance Application (SF 86) on May 2, 2003. Concerning the financial record inquiries, Applicant responded affirmatively to any wage garnishments within the last seven years. He disclosed that his wages had been garnisheed around July 1998 for \$4,550 in child support debt. (GE 3.) He was granted his secret clearance in June 2003. (GE 1.)

Around late 2004, their mortgage lender was being sold to another financial institution that refused to grant a mortgage to Applicant and his spouse. In February 2005, Applicant and his spouse took out a home loan of \$264,247, at an interest rate over 12% (SOR 1.e). (Tr. 53.) The loan payments were around \$2,154 per month. In June 2005, Applicant and his spouse opened a line of credit with their mortgage lender (SOR 1.d) for home improvements. (GE 7.)

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<sup>1</sup>Applicant provided discrepant dates for his employment as a laborer. On his May 2003 SF 86, Applicant indicated that he worked as a carpenter's helper from May 2002 to December 2012 and had been unemployed since then. (GE 3.) On his January 2006 SF 86, Applicant listed his employment as a laborer/carpenter's assistant from June 18, 2002 until May 4, 2003. (GE 2.)

<sup>2</sup>Applicant told an Office of Personnel Management (OPM) investigator in February 2011 that he and his spouse obtained the construction loan in 2005. (GE 5.) Applicant's January 2011 credit report lists a mortgage loan of unspecified amount taken out in October 2003 and paid in February 2005. The amount then due on the loan may well have been included in their new mortgage, which was separate from the personal line of credit in SOR 1.d. (GE 7.)

On January 17, 2006, Applicant completed and certified a Security Clearance Application (SF 86). Applicant responded negatively to the financial record inquiries, and his secret clearance was renewed in June 2006. (GE 2.)

As of July 2006, Applicant was in default on student loan debt of \$4,417 from 1998 for his technical schooling. (GE 5.) Despite the additional income from his Guard duty, around July 2006 Applicant stopped paying on a \$1,050 revolving charge balance with a merchandise retailer, and in November 2007 \$1,057 was placed for collection. He settled the account for less than the full balance in August 2009. Around November 2006, Applicant stopped making any payments on another credit card account (SOR 1.c). As of June 2008, a past-due balance of \$1,205 was in collection. In November 2007, a medical provider placed a \$100 debt for collection (SOR 1.b). Around August 2010, Applicant paid off a \$917 jewelry debt after it had been charged off in December 2007. (GE 7.)

Applicant and his spouse paid their mortgage on time for the first two years. After they missed paying one month, they began to be chronically late 30 days. (GE 5.) Also, Applicant's January 2011 credit report shows that their line of credit became delinquent (SOR 1.d) and was charged off in January 2009.<sup>3</sup> (GE 7.) Around March 2009, Applicant's spouse was in a car accident that left her unable to work for two months. According to Applicant, they fell behind a couple of months in their mortgage payment, and subsequent attempts to pay their mortgage were refused. The town filed a tax lien against his property for failure to pay property taxes around \$4,000.<sup>4</sup> (GE 5; Tr. 22.) In April 2010, his spouse had a second car accident, which aggravated an injury suffered in her earlier accident. She was out of work for another month, and Applicant and his spouse stopped all attempts to pay the mortgage. Around December 2010, their mortgage lender (SOR 1.e) foreclosed. (GEs 5, 7; Tr. 26.) Applicant retained legal counsel to contest the foreclosure, at a retainer fee of \$6,000. (GE 5; AE G; Tr. 46.)

Applicant informed his civilian employer about the foreclosure. (Tr. 23.) On December 10, 2010, Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP). He responded affirmatively to several of the financial record inquiries concerning, in the last seven years, whether he had any property foreclosed on; had defaulted on any loan; had any bills or debts turned over for collection;

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<sup>3</sup> Applicant testified that his spouse took out the line of credit. (Tr. 28.) However, Applicant's January 2011 credit report shows it as a joint account. (GE 7.) He also testified that they stopped paying on the line of credit in November or December 2010, on the advice of the attorney retained to contest the foreclosure of their mortgage. (Tr. 29.) When confronted with the evidence showing that the line of credit account was closed and charged off in January 2009, more than a year before his mortgage lender initiated foreclosure of his home loan, Applicant responded that he was "not certain." He did not explain what caused them to default on the line of credit. He received no information that the line of credit had been sold or transferred from the lender in SOR 1.d. (Tr. 30.)

<sup>4</sup> Applicant testified that they fell behind in their mortgage payments due to car accidents and family medical bills. Subsequent mortgage payments were returned to them by the lender, and around that time, the lien was sold. Applicant speculates that since the mortgage lender no longer held the lien, it may have led the lender to refuse the payments. (Tr. 22.) Applicant is legally contesting the December 2010 foreclosure of their mortgage on the basis that the lender's security interest was extinguished by a tax sale occurring on January 14, 2008. (AE G.) It is unclear whether the tax sale caused the mortgage lender to refuse their payments.

had his wages garnished; or had been over 180 days delinquent on any debts. Also, Applicant answered "yes" to whether he was currently over 90 days delinquent on any debts. Applicant disclosed that his wages were garnished by the IRS for a \$1,400 tax debt satisfied in October 2010. Applicant listed outstanding delinquent balances of \$19,128.41 on the line of credit (SOR 1.d) and \$300,000 on his foreclosed mortgage (SOR 1.e), but that he was legally contesting the foreclosure action. (GE 1.)

A check of Applicant's credit on January 14, 2011, showed the default of the mortgage and the personal line of credit loans, which were reported to have zero balances because of the foreclosure and charge off. Applicant reportedly owed previously undisclosed collection balances of \$1,205 to the creditor identified in SOR 1.c, \$3,366 in student loan debt (not in SOR), and \$239 in medical debt (SOR 1.a and 1.b). (GE 7.)

On February 3, 2011, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM) about his finances. He maintained he paid his mortgage on time until he fell one month behind. Subsequent mortgage payments were always one month late. The lender refused to refinance to allow him to bring his mortgage current. Then, after his spouse's car accidents, his debt "snowballed." He had a hard time paying his mortgage and line of credit loans after the spring of 2010. Foreclosure proceedings were initiated around September 2010, and he and his wife then retained legal counsel to file suit against the lender to rescind the foreclosure. Applicant indicated that he was advised by his attorney to remain in the house pending resolution of his lawsuit. Applicant admitted that he had previously received an invoice showing a \$232,000 balance on the loan. Applicant volunteered that two liens had been placed on the property: a \$3,200 lien filed by a lumber company that he paid, and a \$4,000 lien by the town for property taxes, which was paid by the state's housing authority for him. Confronted about the unreported \$1,205 credit card debt (SOR 1.c), Applicant averred that he incurred the costs for construction supplies for the addition on his home, but he thought the balance had been paid. He indicated that he made payments on his student loan, then deferred it, and subsequently paid it. Applicant did not recognize the two medical debts, of \$139 (SOR 1.a) and \$100 (SOR 1.b) in collection. Applicant reported net household income of \$7,075 and expenses of \$2,200 monthly. He and his spouse were paying nothing on the line of credit or the mortgage due to the foreclosure. While his spouse was currently handling their bills, he intended to become more involved. His spouse, who suffers from depression, sometimes forgets to pay the bills. (GE 5.)

Applicant and his family remained in their home for about one year without paying anything toward the mortgage. Around early 2012, Applicant and his spouse began making court-ordered payments of \$1,000 a month to their mortgage lender's attorney so that they could continue to occupy the house until their case is resolved. Applicant has no answer for what happened to the approximately \$24,000 in extra household income available during the year that they made no mortgage payments. His spouse was handling their finances at the time. (Tr. 48-49, 52.)

As of late February 2012, Equifax Information Services was reporting outstanding collection balances of \$139 (SOR 1.a) and \$100 (SOR 1.b) for medical services; \$385

(listed as authorized user, unpaid since December 2010) and \$1,205 (SOR 1.c) in credit card debt; and \$628 in student loan debt. (GE 6.) By way of interrogatories forwarded to Applicant on February 29, 2012, DOHA asked Applicant to document any progress on these debts, on the foreclosed mortgage and line of credit loans (SOR 1.d and 1.e), and on any liens or unpaid taxes related to the foreclosure. (GE 5.)

In March 2012, Applicant took out an auto loan of \$6,655, to be repaid at \$405 per month.<sup>5</sup> (GE 8.) He purchased a 2002 model-year sedan, and for the most part, has paid the loan on time. (Tr. 59.)

On April 27, 2012, Applicant informed DOHA that he did not owe any liens or sewer taxes. He provided documentation showing that he had paid off his student loan on February 23, 2012. He asserted that he had paid the two medical debts on April 26, 2012. Concerning the credit card debt in SOR 1.c, he paid \$100 and had arranged to pay \$200 a month in bi-weekly payments. About the foreclosure of his mortgage, Applicant explained that he and his spouse had insurance that required the lender to add missed payments to the end of their loan. Yet the lender refused to honor the clause and refused to accept payments from them. Concerning the status of his lawsuit, Applicant explained that motions had yet to be filed in court. He was paying \$1,000 per month to occupy the house.<sup>6</sup> He admitted he and his spouse were making no payments on the line of credit balance of \$20,326, reportedly on the advice of their attorney (“stopped paying line of credit when advised to by our attorney in November 2010”). Applicant completed a personal financial statement on which he reported net monthly income of \$1,091.82 after paying monthly household expenses of \$4,600 and debt payments of \$1,472 (\$100 on SOR 1.c, \$1,000 to pay for continued occupancy of the house, and \$372 on an auto loan). He and his spouse had reportedly “tried credit counseling.” (GE 5.)

Applicant was away from home and work for National Guard training from May 2, 2012 to June 27, 2012. (Tr. 67.) On July 19, 2012, DOHA issued an SOR to Applicant because of the \$239 in medical debt (SOR 1.a and 1.b), the \$1,205 past-due credit card account (SOR 1.c), the \$20,326 balance on the defaulted personal line of credit loan (SOR 1.d), and the foreclosure of his mortgage (SOR 1.e). When he responded to the SOR on October 2, 2012, Applicant indicated that his debts had not yet been resolved. The payment to satisfy the medical debt in SOR 1.a had apparently been returned for insufficient funds.<sup>7</sup> (Answer.)

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<sup>5</sup> According to Applicant’s credit report (GE 8.), the monthly term is \$405. In his budget prepared in January 2013, Applicant indicated they had a car payment of \$360. (AE B.)

<sup>6</sup> Applicant started making the payments around early 2012. (Tr. 48.)

<sup>7</sup> Applicant indicated that after he received the SOR, he discovered that the payments for the medical debts in SOR 1.a and 1.b were returned for lack of funds. Applicant’s January 22, 2013 credit report (GE 8.) shows the medical debt in SOR 1.b as paid after collection with a date of last activity in April 2012. In contrast, the \$139 medical debt in SOR 1.a was reported as an unpaid collection balance as of December 2012. There is evidence to indicate that the check cleared in April 2012 for the \$100 payment.

As of mid-December 2012, Applicant and his spouse owed past-due debt of \$122.56 for natural gas, \$834.58 for electricity,<sup>8</sup> and \$118.16 for cable services. (AE D.) Since February 2012, three new medical debts, of \$155, \$152, and \$205 had been placed for collection and were unpaid. (GE 8.) Applicant testified he was not familiar with the \$155 medical debt. The other two debts, which had been paid down to \$15 and \$6, belonged to his 19-year-old son, who was paying them out of his unemployment check. (Tr. 57-58.)

Applicant and his spouse currently have only one vehicle, the 2002 model-year car on which they are making monthly payments. They were looking at another car but were not certain what they were going to do as of late January 2013. (Tr. 72.)

As of January 11, 2013, Applicant had satisfied the \$125 and \$138.60 medical debts in the SOR. (AE C.) He was repaying a loan from his 401(k) at \$49.73 per month. (AE F.) As of March 12, 2013, Applicant had not resolved the debt in SOR 1.c. He testified that the initial \$100 payment cleared, but he did not follow through on his verbal commitment to make the subsequent payments. He left for training and his spouse did not make the payments. (Tr. 66-67.) In recent contacts with the creditor, the lender wanted a lump sum payment of \$300, which Applicant apparently did not have. (Tr. 55.) Applicant was making no payments on the personal line of credit (SOR 1.d) in collection, reportedly on the advice of legal counsel. Applicant made no effort to contact the assignee currently handling the debt. (Tr. 56-57.) His legal challenge to the foreclosure of his mortgage (SOR 1.e) was still pending with no documented progress. He has been told that the court was waiting for the federal government to take a position about the foreclosure crisis and that cases would be dealt with one by one. (Tr. 47.) Applicant is seeking rescission of the foreclosure sale and a modification of his mortgage.<sup>9</sup> (AE G.) He is not clear on who may hold a lien on his foreclosed home. (Tr. 24.)

Applicant's take-home pay from his defense contractor employment is around \$3,800 per month. As an E-6 training sergeant, he takes home \$434.20 per month from the National Guard. (AEs B, F; Tr. 46.) His spouse is paid \$17.29 per hour for her work at a local hospital. Her monthly net income may be less than the estimated \$1,360. (AE B.) A recent earnings statement showed net pay of \$554.56 for 44.1 hours during a two-week period. (AE F.) As of January 2013, Applicant estimated net household income at \$5,594, their recurring monthly expenses at \$3,583.18, spending money at \$1,600, and \$50 in savings, for a net discretionary income of \$411.02.<sup>10</sup> Applicant pays \$235 per month for

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<sup>8</sup> Applicant's electric bill issued December 20, 2012, showed previous balances totaling \$834.58 and current charges of \$148.75 for a total of \$983.33. (AE D.) Actual electric use history shows that the family used considerably less electricity in the previous four months (August through November 2012) than in December. It may reasonably be inferred that the charge for each of those months was less than \$148.75 per month. So, Applicant and his spouse have been behind for some time in their payments.

<sup>9</sup> In a letter dated February 26, 2013, Applicant's attorney confirmed that Applicant and his spouse are required to pay \$1,000 in use and occupancy payments monthly during the pendency of their challenge to the foreclosure sale. The attorney was silent on the issue of any advice to Applicant about the personal line of credit, including whether or not to make any payments on the loan.

<sup>10</sup> Applicant did not explain what the \$1,600 in spending money covers. For example, it is unclear whether it includes the estimated \$800 in annual out-of-pocket medical expenses.

five cell phones, although his two older sons contribute \$50 per month each to the cost. (Tr. 70.) Applicant estimates that the family's out-of-pocket medical expenses total at least \$800 annually. (Tr. 42.) Applicant's spouse previously took sole responsibility for handling the family's finances because of his poor record in doing so in the past. Around September 2012, Applicant became involved in the family's finances ("I got more in tune once I had everything scared out of me, so to speak."). (Tr. 22-23, 63-64.)

Applicant has proved to be a hard-working, dedicated employee and a team player for his current employer. As a quality analyst, Applicant developed an outstanding reputation among management and co-workers. He takes pride in his work, often going "above and beyond," and working late nights and weekends as necessary. (AE A.)

Applicant's commander in the National Guard for the past 2.5 years has similarly found Applicant to be a reliable team member, who can be depended on to take the initiative and deliver on his commitments. Applicant volunteered to take on the challenge of transitioning from the unit's logistics team to being unit training monitor. He has exhibited "strong, directional guidance" to Guard members and been open and honest when communicating with subordinates, peers, and superiors. (AE A.) Applicant has committed no security violations with the defense contractor or with the National Guard. (Tr. 61.)

### **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.

Applicant has a record of financial delinquencies, despite steady income with a defense contractor since late May 2003 and National Guard income since January 2006. A \$1,205 credit card debt was placed for collection in 2006. Medical debts of \$100 and \$139 were placed for collection. Applicant and his spouse more than doubled their monthly mortgage payment when they took on a \$264,247 mortgage in February 2005. Chronically behind 30 days in their payment after 2006, they paid nothing on their loan for a couple of months in 2009, and stopped any payments after April 2010. Their mortgage lender eventually foreclosed on the loan in late 2010. The evidence also shows that a personal line of credit was charged off in January 2009. As of April 2012, the account had a past-due balance of \$20,326. AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” are established.

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, given the unresolved mortgage, personal line of credit loan, and the credit card delinquency in SOR 1.c. Should

Applicant and his spouse prevail in having the foreclosure rescinded and their mortgage modified, it is unclear whether it would negate any or all of their legal liability for the personal line of credit loan. As for the credit card delinquency, Applicant told DOHA in April 2012 that he sent a \$100 payment and arranged to pay \$200 per month. He admitted at his hearing that he did not follow through on his commitment to the creditor after the initial \$100 payment.

Applicant experienced some circumstances that could implicate 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.” His spouse had two car accidents, in March 2009 and April 2010, which left her unable to work for two months in 2009 and one month in 2010. She received temporary disability pay when she was out of work, but it was not enough for them to meet their financial obligations. (Tr. 51.) Also, Applicant and his spouse pay around \$800 per year in out-of-pocket, non-discretionary medical expenses for the family.

Applicant demonstrated financial irresponsibility in several aspects that is not mitigated by AG ¶ 20(b), however. Available credit information shows that Applicant and his spouse stopped paying on their personal line of credit in 2009 (SOR 1.d) (GE 7.), well before the mortgage lender foreclosed on their home and they retained legal counsel to fight the foreclosure. The evidence does not substantiate that the default occurred because of legal advice from his attorney not to make any payments, even if their current disregard of the debt is on such legal advice. A breach of the mortgage contract by the lender would not explain or justify their default on the personal line of credit, which was a separate loan not secured by the house. (Tr. 56.) Applicant was also not proactive in dealing with the debts in SOR 1.a-1.c. Applicant learned during his interview with the OPM investigator in February 2011 that the medical debts in SOR 1.a and 1.b, the credit card debt in SOR 1.c, and his student loan debt<sup>11</sup> were all in collection. He knew that his spouse has “bouts of depression and forgets to pay bills sometimes.” Yet, he did not take an active role in handling the family’s finances until after he received the SOR. Moreover, Applicant and his spouse made no mortgage payments between April 2010 and early 2012, when they began paying \$1,000 per month in use and occupancy fees under a court order. The

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<sup>11</sup>In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered:

- (a) to assess an applicant’s credibility; (b) to evaluate an applicant’s evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for the whole-person analysis under Directive Section 6.3.

(citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). I have considered the student loan default, payment by insufficient funds check, and current delinquent balances on utility bills for the five above purposes, and not for any other purpose.

Government has legitimate concerns about what happened to the monthly income that was not going toward housing in 2011 and was not applied to their outstanding delinquencies.

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. In February 2012, Applicant paid off his student loan debt. In April 2012, he satisfied the \$100 medical debt in SOR 1.b. He paid the \$139 medical debt in SOR 1.a in January 2013. The resolution of these debts after collection is not enough to fully mitigate the financial concerns under AG ¶ 20(c) or AG ¶ 20(d). Around July or August 2012, Applicant learned that the check to pay off the medical debt in SOR 1.a had been returned. He failed to explain the delay in resolving that delinquent debt, which he knew was of concern to the DOD. As of January 2013, Applicant’s household budget showed discretionary income of \$411 per month, after paying monthly recurrent bills, food costs, gasoline, entertainment, home and auto repairs, and \$1,600 in other, unspecified spending. The \$600 in estimated grocery costs may well be low, given the size of his family. Based on his budget, he should have been able to afford the \$300 lump sum payment demanded by the lender in SOR 1.c to settle that debt. Recent monthly statements for utilities show past-due balances for natural gas, electricity, and cable. Of the \$983.33 billed on December 20, 2012, by their electricity supplier, \$834.58 was past due with no payment received during the previous billing period. Although Applicant and his spouse “tried” credit counseling, concerns persist about whether they can live within their means.

AG ¶ 20(e) applies if “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.” Applicant was given time after the hearing to document the basis for his dispute over the mortgage foreclosure, to show his payments of \$1,000 per month for use and occupancy, and to corroborate that his ongoing disregard of the personal line of credit is on the advice of legal counsel. In a letter of February 26, 2013, Applicant’s lawyer confirmed that a complaint is pending in superior court challenging the mortgage lender’s standing to foreclose on the property in that its security interest was extinguished by a tax sale occurring on January 14, 2008. The attorney also corroborated that Applicant was ordered to pay use and occupancy payments, currently at \$1,000 per month. No documentation was presented of the tax sale, of the mortgage contract, or of the terms of the personal line of credit loan that could substantiate a likelihood of Applicant prevailing on the merits or that the personal line of credit had been subsumed into the mortgage. It is unclear whether Applicant has a reasonable dispute with the mortgage lender, or even if resolution of the mortgage would affect the personal line of credit. The evidence is insufficient to fully establish AG ¶ 20(e).

## 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).<sup>12</sup>

Applicant has been an “extraordinarily hard working and dedicated employee” for his defense contractor employer as well as a committed, professional member of the National Guard. Honest in his communications and possessing personal integrity, Applicant informed his civilian employer about the foreclosure. His candor weighs favorably in assessing whether he can be counted on to fulfill the fiduciary obligations of a security clearance. At the same time, I cannot ignore Applicant's record of irresponsibility with regard to handling his personal financial obligations. While his and his spouse's decision to construct an addition to their home is understandable, given their large family, they took on a larger mortgage than they could reasonably afford in February 2005, as evidenced by the accounts charged off or placed for collection before her first accident in March 2009 (the credit card in SOR 1.c, the personal line of credit in SOR 1.d, his student loan, a \$917 jewelry store debt, and a \$1,057 revolving retail charge debt). They were chronically late in their mortgage payments, and the lender foreclosed around December 2010.

Applicant had his spouse handle their bills, and he knew little about their finances as of his interview with the OPM investigator in February 2011. He assumed that the credit card debt in SOR 1.c and his student loan had been paid. He did not recognize the medical debts in SOR 1.a and 1.b. Placed on notice of these collection debts at that time, Applicant had an obligation to determine their validity and resolve them. While he paid off his student loan in February 2012, he has largely been reactive in addressing the financial issues. He returned from his Guard training in late June 2012, and there is little evidence of efforts on his part to become involved in the household finances until after the SOR was issued. Even then, he made no payment of the relatively small medical debt in SOR 1.a until January 2013. He and his spouse were months behind in their electric bill as of December 2012, and some new medical debts were in collection.

Some of the financial stress can be explained by the expense of having to care for seven children at home, including one son with ongoing medication costs. Applicant appears to live modestly. He is not relying on consumer credit for routine purchases. He bought a used car for \$6,655 in March 2012. Applicant is not required to satisfy all his debts to be considered eligible for a security clearance. Yet, the extent and nature of his

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<sup>12</sup>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 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.

outstanding delinquencies make it difficult to conclude that his financial problems are safely behind him. Should the foreclosure be rescinded and the mortgage terms modified to an affordable monthly payment, Applicant may in the future be able to demonstrate the financial responsibility required of a clearance holder. Based on the record before me, I am unable to conclude that it is clearly consistent with the national interest to continue Applicant's 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
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Elizabeth M. Matchinski  
Administrative Judge