



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



In the matter of:)
)
) ISCR Case No. 11-13027
)
Applicant for Security Clearance)

Appearances

For Government: Stephanie C. Hess, Esq., Department Counsel
For Applicant: *Pro se*

01/07/2014

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant and his spouse filed a Chapter 7 bankruptcy petition on November 13, 2013, seeking a discharge of \$49,932 in unsecured non-priority medical, credit card, loan and other consumer debt, and \$991 in unsecured priority debt owed to the state. Ongoing medical issues have impacted Applicant’s finances, but he did not exercise sound financial judgment at times. He also did not list any debts on his security clearance application, despite knowing that his three investment properties had been foreclosed. Clearance denied.

Statement of the Case

On February 21, 2013, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct, 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 CAF took the action under Executive Order 10865, *Safeguarding Classified Information within Industry*

(February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

Applicant submitted an undated response to the SOR allegations. He requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge, and on August 23, 2013, 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 him. On August 29, 2013, I issued a notice scheduling a hearing for September 26, 2013.

I convened the hearing as scheduled. Four Government exhibits (GEs 1-4) and two Applicant exhibits (AEs A-B) were admitted into evidence without objection. Applicant testified, as reflected in a transcript (Tr.) received on October 18, 2013.

The record was held open for three weeks after the hearing for Applicant to submit additional documents. Applicant did not respond by the deadline. On November 19, 2013, Applicant submitted by facsimile two exhibits. I reopened the record to rule on the admissibility of AEs C and D, and to obtain clarification about a bankruptcy filing. Department Counsel did not object to AEs C and D or to holding the record open to November 29, 2013, for further information about the bankruptcy. On November 26, 2013, Applicant submitted his bankruptcy petition, which was marked as AE E. Department Counsel filed no objection to the document by the December 6, 2013 deadline for comment, and it was accepted into evidence. The record closed on December 6, 2013.

Summary of SOR Allegations

The SOR alleges under Guideline F that as of February 21, 2013, Applicant owed 26 delinquent medical debts totaling \$8,872 (SOR 1.a, 1.c-1.i, 1.k, 1.m-1.n, 1.p-1.w, 1.dd-1.gg, and 1.ii-1.kk); three credit card debts in collection totaling \$2,759 (SOR 1.b, 1.x and 1.y), four delinquent phone/cable/Internet debts totaling \$2,283 (SOR 1.j, 1.l, 1.o, and 1.cc); and a \$120 past-due auto glass debt (SOR 1.hh). In addition, Applicant allegedly had three mortgage loans that went to foreclosure (SOR 1.z-1.bb). Under Guideline E, Applicant is alleged to have deliberately falsified his May 16, 2011 Electronic Questionnaire for Investigations Processing (e-QIP) by not disclosing any of the debts identified in the SOR (SOR 2.a).

In his response to the SOR allegations, Applicant admitted all of the delinquent debts and the mortgage foreclosures. He indicated that he was filing a Chapter 7 bankruptcy to resolve the debts in SOR 1.a-1.f, 1.i, 1.l, and 1.jj. Applicant did not answer the Guideline E allegation. At his hearing, Applicant denied any intentional falsification of his e-QIP.

Findings of Fact

Applicant's admissions to the delinquent debts are accepted and incorporated as findings of fact. After considering the pleadings, exhibits, and transcript, I make the following additional findings of fact.

Applicant is 41 years old. He and his spouse have been married since July 2000. He has two stepchildren, now ages 20 and 24, and a son, who is 16 years old. Applicant has been employed by a defense contractor since June 2011.¹ He was granted an interim security clearance, which was withdrawn. (GEs 1, 2; Tr. 55.)

From January 2000 to December 2004, Applicant worked as an assembler with a manufacturing company. (GE 1.) He decided to take advantage of the housing market and placed most of his assets in real estate. He and his spouse, who was a self-employed hair stylist at the time, bought three multi-family (two three-family and one two-family) investment properties. (Tr. 26.) Based on the available credit records, it appears that they bought one of the investment properties in October 2003 with a mortgage loan of \$252,000 (SOR 1.z). Around May 2004, Applicant bought the second property with a mortgage of \$283,500 (SOR 1.aa). In August 2004, he bought the third property with a mortgage of \$294,300 (SOR 1.bb).² (GEs 2-4.)

In October 2004, Applicant and his spouse bought their current residence. They took on two mortgages: a primary mortgage of \$334,710 and a second mortgage of \$37,190. In March 2005, their loans were transferred to a new lender. (GEs 3, 4.)

In December 2004, Applicant was laid off from his job as an assembler with a manufacturing company. He received one month of severance pay. He did not file for unemployment compensation because he found work with another manufacturing company in January 2005. Although he had full-time work, his spouse's income was inconsistent, and they could not keep up with the mortgage payments on the investment properties.³ Applicant had no success in fully renting the units, and he struggled to cover the difference between the rental income and his mortgage obligations. (Tr. 28-29.) He put the houses on the market, but none sold. (Tr. 24.) In 2006, he stopped paying the mortgages on two of the properties (SOR 1.aa and 1.bb). Both loans went to foreclosure in 2007 for nonpayment. At the time, his monthly payment obligations were \$2,399 on the loan in SOR 1.aa and \$2,804 on the loan in SOR 1.bb. The lenders redeemed the properties to settle the defaulted mortgages. (GEs 2-4.)

¹ On his recent bankruptcy petition filed in November 2013, Applicant was reported as employed by a defense contractor for the past 20 months. (AE E.) Applicant would have been with his employer 20 months when he first consulted with the bankruptcy attorney and not when he filed for bankruptcy.

² Applicant testified that the mortgages collectively were around \$500,000. (Tr. 27.) His credit reports show that the three loans in foreclosure totaled about \$829,800. (GEs 2-4.)

³ Applicant testified that the monthly mortgage payments on the properties were \$1,900, \$2,000, and \$1,200. (Tr. 27.) As of November 2012, Equifax Information Services was reporting that the monthly mortgage payment obligations had been \$2,778, \$2,804, and \$2,399 on the three loans in foreclosure. (GE 4.)

In February 2007, Applicant was laid off. Although he found temporary, full-time work as a machine operator almost immediately, he stopped paying his mortgage on the third investment property (SOR 1.z). Around August 2007, the lender initiated foreclosure proceedings for failure to make his \$2,778 monthly mortgage payment. The lender eventually took the house to settle the defaulted loan. In addition, Applicant lacked medical insurance as a temporary worker. He incurred about \$1,449 in medical debt that went to collection in October 2007 (SOR 1.kk) and another \$2,408 in medical debt between July and December 2007 (SOR 1.s-1.w) that went to collection in 2008. (GEs 2-4.)

In January 2008, Applicant started working as an assembler for an optics company. (GE 1.) From June to July 2008, Applicant incurred another \$1,805 in medical debt that he did not pay (SOR 1.n, 1.p-1.r). In October 2008, he and his spouse stopped paying on the second mortgage for their home, and the loan was charged off around September 2009. In January 2009, his cable provider referred a \$428 balance from June 2008 for collection (SOR 1.o). In May 2009, a small medical debt of \$29 from January 2009 was sent for collection (SOR 1.m). In December 2009, three medical debts of \$207, \$146, and \$186 (SOR 1.dd-1.ff) were placed with a collection attorney. (GE 2.) In June 2010, Applicant incurred a medical debt of \$152 (SOR 1.k) that went unpaid. (GE 4.)

Applicant was laid off in December 2010. He was unemployed until he began his present job in June 2011. He collected unemployment benefits for five months. (GEs 1-2.) He made no payments on a wireless telephone debt due since January 2009, and in March 2011, an \$848 balance was placed for collection (SOR 1.j) by the wireless provider. In April 2011, an auto glass company referred a \$120 debt for collection (SOR 1.hh). In May 2011, medical debts of \$974 and \$75 (SOR 1.ii, 1.jj) were placed with a collection agent. (GEs 2, 4.)

On May 16, 2011, Applicant completed and certified an e-QIP for his current employment. He responded negatively to all the financial record inquiries, including 26b about whether he had any property voluntarily or involuntarily repossessed or foreclosed in the last seven years; 26f about whether he had defaulted on any loan in the last seven years; 26g about whether he had any debts turned over to a collection agency in the last seven years; 26m about whether he had been over 90 days delinquent on any debts in the last seven years; and 26n about whether he was currently over 90 days delinquent on any debts. (GE 1.) As of May 21, 2011, Applicant had outstanding collection debt totaling \$12,159 (SOR 1.b, 1.j-1.x, 1.cc-1.kk) and the four mortgage loan defaults on his credit record. (GE 2.)

On June 14, 2011, shortly after Applicant began working as an assembler for his defense contractor employer, he was interviewed by an authorized investigator for the Office of Personnel Management (OPM). When asked about his negative responses to the e-QIP's financial record inquiries, Applicant asserted that he lives within his means and has the ability and willingness to pay his debts. Applicant was confronted about several of his accounts reportedly being in collection, past due, or in foreclosure. He denied knowing that any of his accounts were in collection. About the foreclosure of the mortgage identified in SOR 1.z, Applicant indicated that the mortgage was on his and his spouse's previous

residence, and that it was foreclosed after they bought their current home.⁴ Applicant denied knowing about most of the debts identified in the SOR. He admitted that the credit card debt in SOR 1.b was 90 days past due, that he had a retail credit card account charged off some time ago, and that he had received several medical bills that he did not pay. He could not identify the providers, dates of service, or balances owed. Applicant attributed his financial problems to lack of income to cover all his bills. His spouse was a self-employed hair stylist without a steady income. He explained that he had tenants in his last home who did not pay the rent and that the medical bills were for treatment when he was not insured. Applicant expressed his intent to resolve his debts through debt consolidation. He asserted that he was current in his household bills, except for electricity and gas. While he and his spouse had struggled in the past to pay the mortgage (\$3,800 per month for mortgage and taxes) on their current home because of the loan's 7% interest rate (Tr. 33), the loan had been modified to lower their monthly payment to \$2,340. At the time of the modification, they were three months delinquent in their payments on both their first and second mortgages and facing foreclosure. The second mortgage was charged off. Applicant told the investigator that he did not list his delinquent debts on his e-QIP because he did not know about most of them. As for the credit card debt in SOR 1.b and some medical debts, which he knew were delinquent, he claimed that he did not recall those debts before his interview. (GE 2.)

Applicant continued to have accounts referred for collection due to his nonpayment. In August 2011, a credit card debt of \$455 was placed for collection (SOR 1.b). In December 2011, a delinquent \$907 credit card debt was placed for collection (SOR 1.y). (GE 4.) Applicant's employment income for 2011 was \$24,915 while his spouse earned about \$9,315. (AE E.)

In November 2011, Applicant took out an automobile loan of \$31,710 for a 2012 model-year vehicle for his spouse, to be repaid at \$515 per month. In January 2012, he bought a new, model-year 2012 car for himself, taking on a \$24,550 loan with monthly payments at \$392. (GE 4; Tr. 43.)

Around January 2012, Applicant's spouse began working in assembly for Applicant's employer.⁵ (AE E; Tr. 42.) In March 2012, Applicant was injured in a fall at work. He incurred medical debts of \$40 (SOR 1.a) and \$535 (SOR 1.c) not covered by insurance. Applicant testified that he was on short-term disability for the first ten weeks, where he received his full pay. He was then on long-term disability at 70% of his salary until January 2013. (Tr. 36.) Medical debts totaling \$477 (SOR 1.d-1.i), which were incurred in 2011, and the \$575 in medical debt from March 2012 went unpaid. (GEs 2-4.)

⁴ Applicant testified that he purchased the three investment properties "about a year apart." (Tr. 26.) It is unlikely that the loan in SOR 1.z was for Applicant's previous residence.

⁵ On their bankruptcy petition, they reported earned income of \$47,583 for the debtor and zero for the joint debtor in 2012. (AE E.) Applicant is listed as the debtor on the petition, so presumably he earned \$47,583. Applicant's spouse, who began her employment with the defense contractor six months after Applicant, should have had some earned income. Applicant testified that he was out of work from March 2012 to mid-January 2013 and that he collected disability. (Tr. 36.) His testimony cannot be reconciled with the information on his bankruptcy petition.

Applicant and his spouse fell behind several times on their mortgage payments in the late spring and summer of 2012. He was delinquent in his payments for his new car (\$2,940 past due as of August 2012) and did not get caught up until March 2013. The payments for his spouse's car were late from October 2012 to December 2012. (GEs 3, 4; Tr. 44-45.) Applicant and his spouse's joint income did not cover all their expenses when he was out on disability, so they had to choose between paying their mortgage or their car loans some months (Tr. 45.) By November 14, 2012, Applicant had made payments to reduce the collection balance of the credit card debt in SOR 1.b from \$455 to \$247, but he had otherwise made little progress toward resolving his delinquent debts. (GE 4.) In February 2013, a phone service provider placed a \$713 debt balance from March 2011 for collection (not in SOR). In May 2013, a \$20 medical debt from November 2012 was placed for collection. (GE 3.)

In mid-November 2012, the DOD CAF asked Applicant to update the status of his past-due accounts. Applicant chose not to address each debt. Instead, on January 9, 2013, he indicated that he was in the process of filing for a Chapter 7 bankruptcy. (GE 2.) Applicant received the SOR on February 26, 2013. Around March 21, 2013, Applicant retained a bankruptcy attorney. (AE A.) She obtained his credit report and apparently advised him to include even the small medical debts in his Chapter 7 bankruptcy. (Tr. 38.)

As of September 24, 2013, Applicant's bankruptcy attorney planned to file Applicant and his spouse's Chapter 7 bankruptcy within the next 60 days. (AE B.) Applicant was working in the facilities department for his employer (Tr. 40), and he needed to obtain paystubs for his bankruptcy attorney to finish his paperwork. He went on medical leave in mid-September 2013 for one month. (Tr. 34-35.)

On November 13, 2013, Applicant and his spouse completed and filed a no asset Chapter 7 bankruptcy. (AEs D, E.) Before filing, they received the financial counseling required. Applicant and his spouse listed checking account deposits totaling \$1,334.29. The only creditor holding an unsecured priority claim was the state's employment security collections' department, to which Applicant owed \$991.24. Applicant and his spouse's \$65,537.74 in unsecured non-priority claims included \$5,307 in medical debt; a \$14,600 debt of Applicant's spouse for breaking a lease in March 2009; her student loan debt of \$14,750; a joint \$430 debt for legal services; and credit card debt of Applicant's totaling about \$11,019.⁶ Their secured claims, totaling \$388,018, included their mortgage and the two vehicles bought in 2012, which they reaffirmed in the bankruptcy. They averaged a reported \$5,406.52 in monthly expenses, which left them with a monthly shortfall of \$181.72,⁷ on household gross earnings of \$63,017. (AE E.) The meeting of their creditors was scheduled for December 17, 2013. (AE D.)

⁶ About \$4,514 of the medical debt in the SOR was Applicant's debt, while the SOR alleges about \$8,872 in medical debt. Only those debts in SOR 1.b, 1.c, 1.j, 1.l, 1.u, 1.x, 1.y, 1.hh, 1.jj, and 1.kk can be clearly identified as included in his bankruptcy. His bankruptcy petition includes a \$5,637.88 credit card balance as Applicant's that is not on any of his credit reports in the file or alleged in the SOR.

⁷ Both Applicant and his spouse were on short-term disability when their income and expenses were calculated. They reported earned income of \$28,860.25 and \$34,157.36 and short-term disability pay of \$3,804.64 and \$2,996.46 in 2013. (AE E.)

Applicant had brought his mortgage current as of May 2013, but he was one month behind in his mortgage payment as of September 2013. (Tr. 41.) His two stepchildren and son were still living at home. His stepdaughter was working for Applicant's employer while also attending college. His stepson was employed by a technology company. (Tr. 42.) When asked whether either of his adult stepchildren helped with the household expenses, Applicant responded negatively because both stepchildren had car payments, and his stepdaughter had college expenses. (Tr. 40.) Yet, when asked how he and his spouse could afford their monthly car payment obligation of \$907 on joint take-home pay around \$5,000 a month, Applicant testified that his stepson and stepdaughter give him \$300 each toward the mortgage. (Tr. 48.) Applicant estimated that he had "maybe \$300 or \$400" remaining each month after paying the household expenses. (Tr. 51.) Applicant expressed regret for having to file for bankruptcy, but he did not have the income to pay off his debts. (Tr. 52-55.)

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.

The evidence establishes that Applicant became seriously financially overextended after he placed most of his savings in real estate. He took on mortgage debt of \$829,800 over the course of one year, which he assumed he could cover through rental income. Applicant was unable to obtain renters for all the units, and he found himself covering the difference between the rental income and the mortgage payments. By 2007, all three properties were in foreclosure. Applicant’s financial problems persisted, even after the homes were redeemed by the lenders. He defaulted on the second mortgage for his current residence, and at least \$14,118 of his consumer debt was placed for collection, which included some credit card accounts and utility (cable, Internet, phone) debts. AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” are established, requiring additional inquiry about the possible applicability of mitigating conditions.

Applicant has the burden of mitigating the financial concerns. 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. As of his hearing in late September 2013, Applicant had made payments on only the debt in SOR 1.b to reduce its collection balance from \$455 to \$247. Applicant may have been advised by his bankruptcy attorney not to pay the small medical debts because he was filing for a Chapter 7 discharge, but it would not explain his disregard of his debts before March 2013. Furthermore, Applicant has a recent record of late payments on his car loans and modified mortgage loan. While these past-due debts cannot provide a basis for disqualification

because they were not alleged in the SOR, they indicate the ongoing nature of Applicant's financial problems.⁸

Some consideration is warranted 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." Applicant incurred medical debt when he lacked insurance, and medical expenses are not discretionary. Following a December 2010 job layoff, Applicant was unemployed for about six months. Loss of employment and medical expenses are mitigating circumstances under AG ¶ 20(b). In addition, Applicant's problem in securing full occupancy for his three rental properties was apparently not foreseen by him. Applicant's financial problems are partially attributable to a downturn in the housing market. On the other hand, it is debatable whether Applicant made a sound financial decision to invest his life's savings in real estate, especially in light of his household income. His spouse was a self-employed hair stylist with an unstable income at the time. The lenders deserve some blame in that they qualified Applicant for the mortgages, but where Applicant was dependent on the rental income to meet his mortgage payments, he placed himself in a precarious financial position. Furthermore, I am not convinced that Applicant was being financially responsible when he took out two automobile loans, of \$31,710 in November 2011 and of \$24,550 in January 2012, for new cars for himself and his spouse when so many collection debts remained unpaid. Applicant knew or should have known after his June 2011 interview that his outstanding delinquencies were of concern to the DOD. Instead of following through on plans to resolve his collection debts through consolidation, he took on these car loans requiring repayment at \$907 per month. He failed to show that he could not afford to make payments on some of his medical debts in collection, many of which were between \$20 and \$40. While Applicant's debts arose largely from factors beyond his control, he has not acted responsibly under the circumstances.

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 resolve financial issues. Applicant's recent bankruptcy filing is a legal means to address his debts, and he received the required financial briefing from an approved credit counseling agency. The DOHA Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts under AG 20(d):

In order to qualify for application of [the "good-faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the

⁸ The DOHA Appeal Board has long held that the administrative judge may consider non-alleged conduct to assess an applicant's credibility; to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; to decide whether a particular provision of the Adjudicative Guidelines is applicable; or to provide evidence for a whole-person analysis under Directive Section 6.3. See, e.g., ISCR Case No. 02-07218 (App. Bd. Mar. 15, 2004); ISCR Case No. 03-20327 (App. Bd. Oct. 26, 2006); ISCR Case No. 09-07219 (App. Bd. Sep. 27, 2012).

applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of "good faith" requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good-faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)). AG ¶ 20(d) is not fully established by a Chapter 7 bankruptcy filing because a discharge will leave those creditors covered by the bankruptcy without a remedy. AG ¶ 20(c) would apply in the event of a discharge because he will be relieved of a substantial debt burden. However, a bankruptcy discharge would not fully mitigate the financial concerns in this case. Applicant has not shown that all of the debts in the SOR are included in his bankruptcy while some debts are included (e.g., a \$5,638 credit card debt and a \$991 debt to the state) that do not appear on his credit record. Some concerns arise about whether the DOD has an accurate accounting of his financial situation. Also significant, he has yet to demonstrate that he can meet his financial obligations without falling behind. Applicant struggled between paying his modified mortgage and car loans when he was reportedly on disability pay in 2012. As of late September 2013, he was again behind in his mortgage payment. He was on medical leave at the time, but only for the previous 1.5 weeks. As of November 2013, he and his spouse were both on short-term disability pay, which at \$5,224 in average income, is equivalent to their full-time earnings. While Applicant testified that he and his spouse have \$300 in net monthly income, his bankruptcy filing shows a net monthly deficit of \$181.72. Contributions from his adult children may make up for the shortfall, but Applicant did not report any such financial assistance on his bankruptcy. The lack of detail provided about his finances during his hearing leads me to question whether he has a good handle on his finances. At this time, I am unable to find that the financial considerations concerns are fully mitigated.

Guideline E, Personal Conduct

The security concerns about personal conduct are set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Applicant did not disclose any of his numerous collection debts on his May 16, 2011 e-QIP. When he was interviewed by the OPM investigator on June 14, 2011, Applicant initially asserted that he lives within his means and that no one would question his ability and willingness to repay his debts. After being confronted with the adverse credit information on his record, Applicant denied knowing that any accounts were in collection status. He later indicated that the second mortgage on his current residence had been

charged off when they modified their primary loan; that his payments to the creditor in SOR 1.b were 90 days past due; that he had received medical bills that he did not pay; and that a mortgage loan had been foreclosed, which he thought was for his previous residence. When asked why he had not disclosed those debts on his e-QIP, Applicant claimed that he did not recall them before his interview. Applicant entered a denial to the SOR allegation of intentional falsification of the e-QIP at his hearing.

The DOHA Appeal Board has explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)). Applicant has consistently denied intentional falsification. The evidence establishes that he knew well before his e-QIP that the mortgages for his three rental properties had been foreclosed within seven years of his e-QIP. Even assuming he did not know that medical debts went to collection, he knew he had not paid the bills because of insufficient income. Applicant should have reported the debts in SOR 1.z, 1.aa, and 1.bb in response to questions 26.b about any foreclosures and 26.f about any loan defaults on his e-QIP. Several medical debts were seriously delinquent as of May 2011 (SOR 1.k, 1.m, 1.n, 1.p-1.w, 1.dd-1.ff, and 1.kk). Applicant should have reported at least some of them in response to questions 26.m and 26.n on his e-QIP. Considering the extent of his delinquent debt as of May 2011, there is a reasonable inference of willful falsification, and Applicant's explanations to the contrary are not viewed as credible. Disqualifying condition AG ¶ 16(a) applies:

(a) deliberate omission, concealment or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

None of the potentially mitigating conditions under Guideline E apply. As noted, Applicant did not acknowledge any financial problems during his OPM interview before being confronted with the adverse credit information on his record, and then he claimed to know nothing about accounts being in collections. AG ¶ 17(a), "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being

confronted with the facts,” is not satisfied. By falsely certifying that he had no financial delinquencies that were required to be reported on his e-QIP, Applicant committed felonious conduct in violation of 18 U.S.C. § 1001. His lack of candor about his debt casts serious doubt on his judgment, reliability, and trustworthiness and precludes favorable consideration of AG ¶ 17(c):

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment.

Moreover, without a meaningful acceptance of responsibility for his false responses on his e-QIP, Applicant does not show the reform needed to satisfy AG ¶ 17(d):

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

The Government learned about Applicant’s financial problems from its investigation of Applicant’s background. Applicant’s belated admissions to the delinquent debts make it difficult to fully rely on his representations.

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).⁹

Applicant’s job layoff and medical issues that led to substantial non-covered medical debt are partially mitigating of the financial judgment concerns. That being said, Applicant had an obligation to his creditors to make every effort to address his debts timely once he was in a position to do so. Certainly as of his June 2011 interview, Applicant was on notice that his delinquencies were of concern to the DOD. As debt balances continued to mount, Applicant bought two new cars, taking on monthly car payments totaling \$907. He took little action to resolve his debts before the SOR was issued. As of the close of the record in this case, many of his debts were pending a bankruptcy discharge. While a legal means to

⁹ 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.

alleviate his debt burden, a Chapter 7 bankruptcy is of little probative value in determining whether he can be counted on to avoid similar financial problems in the future.

Furthermore, Applicant raised considerable doubts for his judgment, reliability, and trustworthiness by not being forthright at the start about the foreclosures of three investment properties and about his struggles to pay other debt obligations, including some credit cards, utility debts, and many medical bills. Both in his handling of his debt issues and in his lack of candor, Applicant raised considerable doubts about whether he can be counted on to comply with DOD security requirements. It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990.). Based on the facts before me and the adjudicative guidelines that I am required to consider, 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-1.kk:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	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