



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



In the matter of:)
)
) ISCR Case No. 11-13937
)
Applicant for Security Clearance)

Appearances

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

11/20/2013

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant began to struggle financially following the dissolution of his first marriage. He hired a debt servicing company that settled at most a couple of his debts. After paying off a delinquent account in April 2013, Applicant still owes about \$23,060 in long-overdue debt. In late August 2013, he filed a Chapter 13 bankruptcy case under which he proposes to repay his debt at \$252 per month for five years. Applicant appears to have sufficient income to afford the payment, and he can be counted on to follow through with this plan to resolve his debts. Clearance granted.

Statement of the Case

On April 5, 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 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 responded to the SOR allegations on May 8, 2013, and he requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. On August 22, 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 Applicant. On August 30, 2013, I issued a notice scheduling a hearing for September 27, 2013.

I convened the hearing as scheduled. Five Government exhibits (GEs 1-5) and six Applicant exhibits (AEs A-F) were admitted into evidence without objection. Applicant testified, as reflected in a transcript (Tr.) received on October 7, 2013.

The record was held open for three weeks after the hearing for Applicant to submit additional documents. On October 17, 2013, Applicant submitted by electronic mail three exhibits, which were marked as AEs G-I. On October 18, 2013, I gave the Government a deadline of October 28, 2013, for comment. On October 18, 2013, Department Counsel indicated that the Government did not have any objections, pending assurance from Applicant that his submissions were complete. On confirmation from Applicant that no information was missing, I accepted the documents into evidence as AEs G-I. The record closed on October 18, 2013.

Findings of Fact

The SOR alleges under Guideline F that as of April 5, 2013, Applicant owed delinquent debt totaling \$30,819 on seven accounts (SOR 1.a-1.g). In his response to the SOR allegations, Applicant admitted that six of the alleged debts were delinquent. The \$2,215 debt alleged in SOR 1.e had been paid before the SOR was issued.¹ After considering the pleadings, exhibits, and transcript, I make the following additional findings of fact.

Applicant is a 46-year-old high school graduate who retired from the U.S. military in April 2006 at the rank of technical sergeant. He has held a DOD security clearance for 27 years for his duties in the military and then for a succession of defense contractor employers. He is currently employed as an integration engineer for a defense contractor. (GEs 1-3; Tr. 20-21.)

While serving overseas, Applicant married his first wife in March 1988. They had three children, who are now ages 22, 18, and 12.² (GE 1; AE B; Tr. 42-43.) Following his

¹ Applicant now denies any knowledge about the judgment or the account that it represents. (AE I.)

² Applicant indicated on his e-QIP (GE 1.) that the younger of his two daughters was born in 2005. Other evidence indicates a likely birthdate for her of February 1995. She was born overseas on a U.S. military base, and Applicant was stationed in the United States from June 1998 until his retirement. (GEs 1, 3.) Applicant

retirement from the military, Applicant began working as a senior systems network engineer for a defense contractor. He stayed on when the contract was acquired by another defense contractor (company X) in May 2008. (GE 1.)

In May 2008, Applicant and his first wife separated due to an “irretrievable breakdown” in their marriage. Applicant moved out of the marital home. Shortly thereafter, he and his current spouse began cohabiting. (GE 1; AE B.) In early June 2009, Applicant’s first wife filed for divorce. (AE B.) Applicant was ordered to pay child support of \$630 per week, and his wages were automatically garnished for child support pending the final decree of divorce. (GEs 1, 3; AE B; Tr. 46.) Applicant married his second wife in July 2011. (Tr. 54.)

Due to his child support payments, Applicant knew that he would not be able to keep up with his payments on the credit card debt incurred during his marriage to his first wife and also with the costs of maintaining a separate household. (GE 2.) On June 22, 2009, Applicant hired a debt resolution company to negotiate with his consumer creditors at a monthly fee of \$100 starting on July 1, 2009. (GEs 2, 3; AE D; Tr. 57.) He did not want to file for bankruptcy, and the debt management plan would allow him to resolve his debt over time. On the advice of the debt resolution company, Applicant stopped paying on the accounts covered in their agreement.³ (GE 3; Tr. 23-24.) Around July 1, 2009, he advised his creditors of his agreement with the debt resolution company, to whom he had given a limited power of attorney. (GE 2; AE F.) Over the next two years, the debt resolution firm settled a couple of his delinquent accounts, including the debt in SOR 1.g. (Tr. 58.)

In November 2009, Applicant relocated for a new job in a distant state with a lower cost of living. His future spouse found work with a grocery store in their new locale at an hourly wage between \$10 and \$12. (Tr. 55-56.) Applicant relied on consumer credit to cover about \$5,000 in relocation costs. (GE 1; Tr. 22, 50.)

On April 13, 2010, Applicant and his first wife entered into a binding separation agreement, declaring their rights and responsibilities upon their divorce. Applicant’s first wife assumed responsibility for all expenses related to the marital home from September 2009, with the exception of three utility accounts in Applicant’s name. Applicant was held liable for all credit card debt in his name incurred during the marriage. (AE B; Tr. 43.) Applicant and his ex-wife agreed to share legal custody of their two unemancipated children. She had sole physical custody of the children. Applicant had visitation rights, and he bore the costs of their children’s airfare to visit him. Applicant also agreed to pay \$825 per week in alimony to his ex-wife in lieu of child support because of the tax advantages to him.⁴ (AE G; Tr. 47.)

also testified that she just started college. (Tr. 42.)

³ The listing of debts and balances covered by the plan was not submitted in evidence, but Applicant stopped paying on the debts identified in SOR 1.b, 1.c., and 1.d around that time. See GEs 4, 5; AE I.

⁴ Effective March 1, 2012, alimony laws were reformed in the state. Under Section 208:53 of the state’s general laws, except for reimbursement alimony or circumstances warranting deviation for other forms of alimony, the amount of alimony should generally not exceed the recipient’s need or 30 to 35 percent of the

In conjunction with the periodic reinvestigation of his Top Secret clearance, Applicant completed and certified to the accuracy of an Electronic Questionnaire for Investigations Processing (e-QIP) on January 11, 2011. (Tr. 23.) He responded affirmatively to financial record inquiry 26.h, concerning any account or credit card suspended, charged off, or canceled for failing to pay as agreed within the last seven years. Five creditors had been notified that the debt settlement company was managing his accounts in an attempt to settle his outstanding balances at a reasonable rate. One of his five debts had been settled, and he expected to settle the rest within the next year. Applicant also answered "Yes" to 26.k, regarding any wage garnishment within the last seven years. He explained that his wages had been garnished under a temporary child support order pending the final decree of divorce. (GE 1.)

As of January 19, 2011, the credit bureaus were reporting four past-due collection accounts on Applicant's record with respective balances of \$8,675 (SOR 1.b), \$6,156 (SOR 1.c), \$4,126 (SOR 1.d), and \$1,831 (SOR 1.f). Another account (SOR 1.g) had been placed for collection in September 2009 in the amount of \$4,400, but it reportedly was rated as current with a \$3,803 balance as of June 2010. Applicant was making payments as agreed on other consumer credit accounts with balances of \$3,857 (SOR 1.e), \$703, \$7,932, and \$18,766. (GE 5.)

On February 16, 2011, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM), partially about accounts that had been referred for collection. Applicant indicated that he had suspended payments on the accounts covered by his debt management plan, including those listed in SOR 1.b, 1.c, 1.d, and 1.f. He indicated that he would have to check his records for information about the account in SOR 1.g. During a follow-up telephone contact with the investigator on February 18, 2011, Applicant indicated that the account in SOR 1.g was settled and closed on September 25, 2009 [sic].⁵ (GE 3.)

Around July 2011, the debt resolution firm stopped debiting Applicant's monthly fee from his bank account without any explanation or warning. (Tr. 57.) Applicant tried to contact the company without success. After some research, he determined that numerous complaints had been lodged, and three states had filed lawsuits, against the firm for deceptive practices. (AE D.)

Expecting to be included in a round of layoffs by his then employer, Applicant accepted a job with another defense contractor in the summer of 2011. Applicant incurred \$5,000 in long-distance moving expenses, which he spread among his credit card accounts. (Tr. 50-51.) Applicant's spouse found work in a supermarket in their new area, again initially part-time at an hourly wage between \$10 and \$12. (Tr. 55-56.) Around

difference between the parties' gross income established at the time of the order for alimony.

⁵ Available credit reports indicate that the account was closed and placed for collection in September 2009. The debt was likely settled in August 2011, which is the date of reported last activity on the account. (GE 4; AE I.)

August 2012, Applicant was laid off. He fell behind in his alimony payments during a brief period of unemployment. (Tr. 25.) Sometime in the fall of 2012, he accepted an offer to return to company X as an integration engineer. Applicant funded the \$2,000 in out-of-pocket costs for his and his spouse's long-distance relocation by selling most of their possessions. With only those belongings that they could fit in their compact car, Applicant and his spouse drove across the country for his new job. (Tr. 25-26, 50.)

At the request of the DOD CAF, Applicant executed a Personal Financial Statement in mid-March 2013. Applicant reported monthly take-home pay of \$6,114 for himself and \$1,200 for his spouse. With his military retirement, their household income was \$8,685 after deductions.⁶ Applicant indicated a net remainder of zero each month after paying \$3,300 in alimony, their household expenses, and \$2,240 in debt payments.⁷ Applicant was paying his divorce attorney \$150 a month. Applicant added that he had been repaying the debt in SOR 1.e at \$460 per month, and that his goal was to resolve his debts through payments rather than bankruptcy. (GE 2.)

As of June 11, 2013, Equifax Information Services was reporting some delinquent balances on Applicant's credit record, as set forth in the following table:

Debt	Delinquency History	Payment Status
\$4,013 judgment (SOR 1.a)	\$4,013 judgment filed Jun. 2010; not satisfied as of Jun. 2013. ⁸ (GE 4; AE I.)	No payments; creditor listed on bankruptcy. ⁹ (AEs H, I.)
\$129 charged-off balance (not alleged)	Credit card account opened Aug. 2005; \$800 credit limit; \$767 high balance; last activity Oct. 2012; \$129 charged off. (GE 4; AE I.)	Creditor listed on Aug. 2013 bankruptcy. (AE H.)
\$989 past-due credit card (not alleged)	Joint retail charge account opened May 2011; \$8,000 credit limit; last activity Jan. 2013; 90 days past due in the amount of \$989 on	Creditor listed on Aug. 2013 bankruptcy. (AE H.)

⁶ Applicant reportedly earns \$7,888 in gross earnings from his work per month. More than half of his take-home salary is being paid in alimony.

⁷ He indicated he was making monthly payments of \$150 and \$300 on two accounts, which were shown in the available credit reports (GE 4; AE I) to be delinquent with no activity since January 2013.

⁸ In forwarding a copy of his June 12, 2013 credit report for inclusion in the record after his hearing, Applicant indicated that while he had previously admitted the debt in SOR 1.a, he confused this account with that in SOR 1.d. He denied knowing anything about the judgment account. The judgment is on his credit report, but there is no listing of the debt in SOR 1.d as a separate line item. See AE I. The judgment debt in SOR 1.a and the debt in SOR 1.d could be the same debt, but the evidence is unclear. The creditor was included in his bankruptcy. See AE H.

⁹ Applicant provided only the certificate of notice showing the creditors included in his Chapter 13 filing. He did not provide any evidence as to the debt amounts or account numbers.

	\$8,396 balance as of May 2013. (GE 4, AE I.)	
\$178 past-due credit card (not alleged)	Retail charge account opened Feb. 2006; \$450 limit; last activity Feb. 2013; \$178 past due on \$526 balance as of May 2013. (GE 4; AE I.)	Creditor listed on Aug. 2013 bankruptcy. (AE H.)
\$8,675 charged-off balance (SOR 1.b)	Credit card account opened Jun. 2006; credit limit \$8,000; last activity Jun. 2009; \$8,675 charged off Jan. 2010. (GEs 4, 5; AE I.)	Debt verified; creditor listed on Aug. 2013 bankruptcy. (AEs H, I.)
\$6,156 charged-off balance (SOR 1.c)	Credit card account opened Jun. 2006; credit limit \$6,000; last activity Jun. 2009; \$6,156 charged off Jan. 2010. (GEs 4, 5; AE I.)	Debt verified; creditor listed on Aug. 2013 bankruptcy. (AEs H, I.)
\$615 past-due credit card (not alleged)	Retail charge account opened May 2011; \$3,400 credit limit; last activity Jan. 2013; \$615 past due on \$3,922 balance as of May 2013; account closed by creditor. (GE 4; AE I.)	Creditor listed on Aug. 2013 bankruptcy. (AE H.)
\$4,216 charged-off balance (SOR 1.d)	Revolving charge account opened Oct. 2002; high credit \$4,216; last activity Jul. 2009; \$4,216 charged off Jan. 2010. (GEs 4, 5; AE I.)	No payments; creditor listed on Aug. 2013 bankruptcy. (AE H.)
\$2,215 credit card debt (SOR 1.e)	Credit card account opened Feb. 1997; \$7,649 high credit; \$3,857 current balance as of Dec. 2010 (GE 5); 30 days past due in May 2012; 150 days past due in Sep. 2012; account closed. (AE I.)	Satisfied in Apr. 2013 after six months of payments. (GE 4; AEs E, I; Tr. 51-52.)
\$1,831 collection debt (SOR 1.f)	Joint installment loan opened Aug. 2005; \$1,744 high credit; \$1,831 for	Asserts settled before his bankruptcy filing; no longer on credit record. ¹⁰ (Tr. 58.)

¹⁰ Applicant's January 2011 credit report showed two installment accounts with the same lender: an account opened in August 2004 with a \$3,000 credit limit and a zero balance as of August 2005 and an account opened in August 2005 with no activity since then (SOR 1.f). That account reportedly had a \$1,831 collection balance and was being managed by a debt counseling service. See GE 5. Applicant submits that the debt has

	collection; managed by debt resolution firm as of Jan. 2011. (GE 5.)	
\$3,803 collection debt (SOR 1.g)	Revolving charge account opened Nov. 2007; \$4,400 for collection Sep. 2009 (GE 5.); high balance \$4,605. (AE I.)	Settled on payment of \$2,994 Aug. 2011. (AE I.)

As of June 2013, Applicant had nine consumer credit card accounts on his credit record with outstanding balances totaling \$58,928. Only two of the accounts, with respective balances of \$18,606 (closed by creditor) and \$8,302 (open account), were rated as current. (AE I.) Applicant denied that he had any active credit card accounts as of late September 2013. (Tr. 44.)

After struggling financially for the past year, and with his security clearance eligibility under scrutiny for unresolved debts, Applicant decided that his only viable option was bankruptcy. (Tr. 26.) On August 30, 2013, he and his spouse filed a joint Chapter 13 petition.¹¹ (AEs A, I.) Under his plan, which was not confirmed as of his hearing, Applicant proposed to make monthly payments of \$252 for five years starting in September 2013. (Tr. 38-39.) He planned to mail his first payment on September 27, 2013. (Tr. 45-46.) He provided no proof after his hearing that it had been mailed. Applicant's bankruptcy attorney has indicated to him that his creditors are unlikely to object to his bankruptcy plan at the meeting of creditors scheduled for October 4, 2013. (AEs A, H; Tr. 44-45.)

Applicant's spouse takes home about \$400 a week from her job at a supermarket. (Tr. 44, 54-55.) With the \$252 bankruptcy payment, Applicant and his spouse have around \$300 in monthly net household income. (Tr. 39-40.) Because Applicant is paying above the new statutory limit for alimony, he believed he had a "good chance" of the court reducing his alimony obligation. (Tr. 40-42.) After his hearing, Applicant determined that under the state's child support guidelines effective August 1, 2013, he would likely be required to pay more than the \$825 per month currently going to alimony. The younger of his two daughters is a college freshman, and his son lives with his ex-wife. (Tr. 42.) For now, he has decided to continue with his present alimony arrangement. (AE G.)

been paid because of the zero balance of the August 2004 account. See AE I. In February 2011, Applicant told the OPM investigator that he opened an account with the creditor on a date unknown in an initial amount of \$15,000. The account had a balance of \$1,774.49. The account number he provided in February 2011 does not match that of the account opened in August 2004, so the debt in SOR 1.f could be a separate account. He indicated in February 2011 that settlement of the account was being negotiated by the debt management firm. See GE 3. Recent credit reports (GE 4; AE I.) do not substantiate an outstanding delinquency to the creditor as of the date the SOR was issued. Even if SOR 1.d is a separate debt from the judgment in SOR 1.a, the creditor identified in SOR 1.d has been notified of Applicant's bankruptcy filing. (AE H.)

¹¹ Applicant filed as doing business in information technology control. (AEs A, H.) Among the creditors notified of his Chapter 13 bankruptcy filing were the Internal Revenue Service and two state tax authorities. (AE H.) It is unclear what Applicant owes in federal and state taxes. Applicant also listed as a creditor his divorce attorney, to whom he was paying \$150 per month. (Tr. 41-42.)

Applicant has been a good employee for company X. In quality of work, productivity, and problem solving, Applicant has exceeded his employer's expectations. (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 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 began to struggle financially after he and his ex-wife separated in May 2008. He had to maintain a separate residence for himself, although he had some financial assistance from his cohabitant girlfriend, whom he later married. When Applicant's ex-wife filed for divorce in June 2009, the state began garnishing \$630 per week from his wages for child support. On the advice of a debt servicing firm retained to negotiate settlements with his creditors, Applicant stopped paying on some of his credit card obligations around July 2009. Two years later, the debt resolution company had settled a couple of his debts, including the debt in SOR 1.g. Because of alimony payments at \$825 per week, Applicant made no payments toward some long-overdue accounts until late 2012, when he began repaying the debt in SOR 1.e. As of early April 2013, he owed around \$23,060 in delinquent balances, assuming settlement of the debt in SOR 1.f that is no longer on his credit record. 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. The credit card accounts in the SOR became delinquent in 2009 or later. Furthermore, Applicant has fallen behind recently in some credit card payments. As reflected in his June 2013 credit report, Applicant was behind on \$1,911 on four accounts with an aggregate balance of \$12,973. While these past-due debts cannot provide a basis for disqualification, they indicate the ongoing nature of Applicant's financial problems.¹²

Applicant's financial problems largely stem from his divorce. He incurred the costs of maintaining a separate residence, repayment liability for the outstanding marital credit

¹² 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).

card debt, and a child support obligation of \$630 per week. Upon his separation agreement in April 2010, Applicant agreed to an alimony obligation of \$825 per week in lieu of child support. Divorce is a mitigating circumstance under 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.” When faced with these financial burdens, Applicant acted responsibly in several aspects. Within a month of his ex-wife filing for divorce, Applicant retained the services of a debt resolution firm to negotiate settlements with his creditors. The evidence shows that he had been making payments on his debts until he was advised to stop by the debt resolution firm. Applicant paid the debt resolution firm \$2,400 before the company, which settled two debts on his behalf, breached its agreement with him without warning in July 2011. With the obligation to work with his creditors then squarely on him, and facing a likely job layoff, Applicant took a new job, which meant another long-distance relocation that summer. This decision was reasonable, despite the additional consumer credit burden of another \$5,000 in moving costs. Applicant’s financial situation was again compromised a year later, when he was unexpectedly laid off. He minimized the impact on his credit with his move for his current position by selling most of his personal possessions and then driving across the country. All the while, he continued to pay his alimony on time, but for a brief period of unemployment after the layoff.

Applicant’s effort to settle his debts through the debt resolution firm is indicative of his good faith under AG ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” So too are his payments from late 2012 to April 2013 to satisfy the debt in SOR 1.e. His recent failure to keep up with his payments on some credit card accounts makes it more difficult to apply 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.” As of May 2013, Applicant and his spouse were ninety days past due on a joint retail credit card account opened in May 2011, which has been closed by the credit grantor. Furthermore, although Applicant was making payments on two credit card accounts opened during his first marriage, which had balances of \$18,606 and \$8,302, his high ratio of debt to credit raises some concern about his handling of his financial matters. At least before the bankruptcy, Applicant did not have any financial counseling beyond arranging the debt management plan.

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,” is partially applicable. Applicant’s June 2013 credit report (AE I) confirms that the debt in SOR 1.g was settled well before the SOR was issued. The evidence to substantiate the settlement of SOR 1.f falls short of that required under AG ¶ 20(e), although the debt no longer appears on his credit record as an outstanding balance.

Applicant and his spouse filed a Chapter 13 bankruptcy case in late August 2013 to alleviate the financial pressure of their large credit card debt. Applicant asserts that he can afford the proposed \$252 monthly payment under the bankruptcy. As of March 2013, he

reportedly had a zero household balance after expenses and debt payments totaling \$2,240 each month. The evidence shows that he was behind in his payments on two credit card accounts at that time. Yet, with the satisfaction of the debt in SOR 1.e in April 2013, Applicant freed up about \$460 per month. It does appear that his household income can support the bankruptcy payments, and all of his creditors have been included in the bankruptcy. As of his security clearance hearing, Applicant expected his bankruptcy plan to be confirmed, although it is possible that some of his creditors will object to the plan. Applicant's finances are likely to remain tight as long as he is required to maintain alimony payments that take half of his net income each month. Even so, Applicant has shown through his two years of payments to the debt resolution firm, his satisfaction of the debt in SOR 1.e, and his recent bankruptcy filing, that he can be counted on to continue to take steps to address his debts, whether or not his present bankruptcy plan is confirmed. The financial considerations concerns are sufficiently mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(a).¹³

Applicant became financially overextended because of his divorce. Wanting to support his children, he agreed to an alimony obligation that takes half of his net income. In making the whole-person assessment required under the Directive, 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). Applicant tried to settle his debts through a debt servicing company that breached its agreement with him after he made two years of payments. He has now taken steps to ensure through a Chapter 13 bankruptcy filing that his creditors receive at least a percentage of what he owes them. Applicant has shown that he takes his security clearance obligations seriously by reporting his financial problems on his e-QIP. Based on the facts and circumstances in evidence, I conclude it is clearly consistent with the national interest to continue a security clearance for him.

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:

¹³ 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.

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraph 1.a: For Applicant
Subparagraph 1.b: For Applicant
Subparagraph 1.c: For Applicant
Subparagraph 1.d: For Applicant
Subparagraph 1.e: For Applicant
Subparagraph 1.f: For Applicant
Subparagraph 1.g: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Elizabeth M. Matchinski
Administrative Judge