



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



In the matter of:)
)
) ISCR Case No. 11-14694
)
Applicant for Security Clearance)

Appearances

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

01/28/2014

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant fell behind \$87,000 in his mortgage payments before a February 2013 loan modification. Federal student loans that he cosigned for his son went into collection before Applicant began repaying them in March 2013. Since August 2013, Applicant has been repaying delinquent state income tax debts now at \$1,554. Despite household social security benefits totaling \$2,690 a month since March 2013 and his full-time employment income, Applicant was two months behind on his and his spouse’s mortgage as of December 2013. The financial considerations concerns are not sufficiently mitigated. Clearance denied.

Statement of the Case

On May 8, 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 in writing on June 14, 2013, and in an email on July 5, 2013. He requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. On September 20, 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. I issued a notice scheduling a hearing for December 4, 2013.

I convened the hearing as scheduled. Eight Government exhibits (GEs 1-8) and one Applicant exhibit (AE A) were admitted into evidence without objection. A chart, prepared by Department Counsel as a supplement to his oral closing argument, was accepted as a hearing exhibit but was not formally admitted into the record. Applicant testified, as reflected in a transcript (Tr.) received on December 12, 2013.

At Applicant's request, I held the record open for three weeks after his hearing for additional exhibits. No documents were received, and the record closed on December 26, 2013.

Findings of Fact

The SOR alleges under Guideline F that as of May 8, 2013, Applicant owed a \$102 wireless telephone debt in collection (SOR 1.a); past-due federal student loans of \$18,000 (SOR 1.b) and \$20,824 (SOR 1.c); a delinquent credit card debt of \$790.84 (SOR 1.e); two past-due loans of \$6,278.60 (SOR 1.f) and \$19,237.59 (SOR 1.g); and delinquent state taxes of \$433.56 for 2008 (SOR 1.h), \$1,441.26 for 2010 (SOR 1.i), and \$2,038.03 for 2011 (SOR 1.j). In addition, Applicant was allegedly past due in the approximate amount of \$87,000 on his mortgage (SOR 1.d).

When he answered the SOR allegations, Applicant admitted that he had been delinquent on the wireless phone account (SOR 1.a) and the credit card account (SOR 1.e), although they have been paid. He acknowledged that his home loan (SOR 1.d) had been past due, but it had been modified and was up-to-date. Applicant admitted that he had been behind on two bank loans, which he co-signed for his son's education (SOR 1.f and 1.g). Payments were being made. Applicant admitted the delinquent state tax debts. He was waiting for tax information before arranging repayment. Applicant initially denied the student loan debts identified in SOR 1.b and 1.c, which he claimed were paid and up-to-date, although at his hearing, he admitted the debts.

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

Applicant is a 56-year-old high school graduate. He has worked for the same defense contractor since January 1980 with a one-year break in service in the mid-1980s, when he was employed by an insurance company. An area superintendent for his employer, he transferred to another department two months ago, and he has been working extended hours. (GEs 1, 2; Tr. 45-48) Applicant holds a DOD Secret clearance, which was renewed most recently around January 2006. (GEs 1-3.)

Applicant has been married to his spouse since February 1988. They have three sons now ages 24, 17, and 14. (GEs 1, 2; Tr. 48-49.) He and his spouse have owned their home since December 1988. (Tr. 63.) As they refinanced their mortgage over the years, they took on larger amounts of debt. In February 2002, they paid off a \$120,700 mortgage held since October 1998 and a second mortgage of \$40,000 opened in April 2000 through new loans of \$166,000 and \$29,000. In March 2003, they took on a \$251,200 mortgage. In October 2004, he and his spouse refinanced with a \$278,618 loan. Their account was 30 days past due twice. In April 2006, they took out a mortgage of \$352,750. Their payments on this loan were 90 days late three times, 60 days late 11 times, and 30 days late eight times over the next two years. As of August 2011, their mortgage was \$46,953 past due on a \$351,980 balance with a last payment in August 2010. (GE 6.) Around October 2011, the mortgage was transferred to their current lender. (GE 5.)

On December 3, 2001, Applicant completed a security clearance application (SF 86) for his DOD clearance. He disclosed no issues of potential security concern, and available credit information shows that he was paying his financial accounts on time. (GEs 2, 6.)

In November 2009, Applicant's spouse was terminated from her part-time job paying \$50 an hour after she told her employer that she was going on disability. She had been reporting for duty three days instead of four days a week due to illness. (Tr. 83.) Applicant's spouse received disability pay for six months and then unemployment compensation for two years. Her benefits, around \$1,700 per month, were less than her previous income of \$4,000 a month. (Tr. 42-43, 83.) Applicant's middle son had multiple knee surgeries in 2010, which led to some out-of-pocket medical costs. (GE 3.) Applicant's oldest son withdrew from college to help out at home. (Tr. 51.)

In 2010, Applicant began taking loans from his 401(k) for mortgage payments and other household expenses. Over the next three years, he borrowed between \$40,000 and \$60,000 from his 401(k). He fell behind in his loan payments. In addition, state income taxes were not paid. (Tr. 69.) In August 2012, the state filed a tax lien against him and his spouse. (GE 7.) As of March 2013, Applicant and his spouse owed \$433.56 in penalties for 2008 (SOR 1.h), and delinquent taxes, penalties, and interest of \$1,441.26 for 2010 (SOR 1.i) and \$2,038.03 for 2011 (SOR 1.j). (GE 4.)

On October 6, 2011, Applicant completed and certified to the accuracy of an Electronic Questionnaire for Investigations Processing (e-QIP) to renew his Secret clearance. He disclosed no issues of financial concern on his e-QIP (GE 1), even though he was late over 120 days on his mortgage and also delinquent on other debts. A joint revolving credit card account was past due 90 days on a \$477 balance (not alleged in

SOR). A wireless telephone debt of \$102 from September 2010 was in collection (SOR 1.a). Applicant cosigned on a student loan of \$7,754 for his eldest son. The loan was charged off and placed for collection around May 2011. Federal student loan debt of \$17,316, cosigned for his son's college costs, was reportedly in collection with a past-due balance of \$20,824 as of August 2011 (SOR 1.c).¹ Another federal student loan of \$18,819 (SOR 1.b) had been sold. As of October 2011, his son's student loans were no longer deferred because his son was not in school. (GE 3.) Applicant was current in his payments on a \$13,493 automobile loan, but his payments had been late 30 days 11 times over the last two years. (GE 6.) Applicant knew that he was "just getting by," but he thought everything was fine. (Tr. 45.)

On October 26, 2011, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM) about the financial issues on his credit record, and about his failure to report any delinquencies on his e-QIP. Applicant acknowledged that with limited exception, he had been late in his payments on his debts over the last two years. He attributed his financial issues to his spouse's ongoing unemployment and to medical bills for his middle son in 2010. Applicant explained that he did not list any of his multiple financial issues on his e-QIP because he rushed to complete the form and found it complicated. He also knew his credit would be reviewed and that he would have an opportunity to explain his situation to an investigator. Applicant denied any intent to conceal his debts, but he also admitted that most people did not know about them. He explained that his spouse handled their finances previously, but she became overwhelmed, so he took them over. Applicant was in the process of modifying their home loan. Also, he had settled a couple of consumer credit accounts for less than their full balances. Applicant claimed he had been repaying his son's student loans at \$100 a month, so he did not know why a federal student loan (SOR 1.c) was on his record as a collection debt.² Applicant believed that he had paid all the fees associated with a wireless phone service that he had discontinued (SOR 1.a). Applicant maintained that he lived within his means, and he did not foresee any future financial difficulties. (GE 3.)

Applicant's interview led him to realize how much he had fallen behind. (Tr. 45.) He confronted his son about the delinquent federal student loan identified in SOR 1.b, but neither he nor his son pursued any repayment arrangements at that time. Instead, Applicant continued to take on new debt. In November 2011, he took out a \$2,600 unsecured loan. (GE 5.) In May 2012, Applicant took on \$435 monthly payments for an automobile leased for his wife. He made his payments on time until November 2012, when he began to fall behind. (GE 5; Tr. 74-75.) His spouse's unemployment benefit stopped

¹ Available documentary evidence suggests that Applicant had co-signed on two federal student loans of \$18,819 (SOR 1.b) and of \$17,316 (SOR 1.c). The loan monies in SOR 1.b were disbursed in December 2007 and in August 2008 for his son's education. (AE A.) The student loan in SOR 1.c was referred for collection and with interest reached \$20,824. (GE 6.) Applicant's son took out separate private loans (SOR 1.f and 1.g), which Applicant also cosigned. (GE 3.)

² Applicant indicated at his hearing that he had been making \$100 payments on his son's loans for approximately seven months (Tr. 17, 66), and that his son's school loans were the last thing on his list for payments in October 2011. He provided no documentation of any payments in 2011 on the student loans in the SOR.

around September 2012. She had an application for social security disability pending since July 2012. (Tr. 42-43.)

As of January 2013, Applicant was past due \$434 in the auto lease payment for his spouse's car. The \$102 wireless phone debt from 2010 had not been paid. His son's federal student loans were in collection. Applicant was past due \$311 on the credit card account in SOR 1.e (GE 5) due to his procrastination in paying the bills. (Tr. 64.) His delinquent state taxes had not been paid. His mortgage was approximately \$87,000 in arrears. His credit record showed no payments on his mortgage since August 2010 (GE 5), although Applicant testified that he made a payment every couple of months to keep the loan from going into foreclosure. (Tr. 58.)

As of February 2013, Applicant was repaying his son's private student loans (SOR 1.f and 1.g) at \$100 each every two weeks. In mid-February 2013, Applicant and his spouse completed a home loan modification agreement. Under the new terms, their mortgage payment was lowered from \$3,000 per month (GE 5) to \$1,347.41 for the first year with annual adjustments thereafter. All unpaid late charges were waived, but the principal balance of their loan increased to \$424,711. Of the principal balance, \$193,565 is non-interest bearing and will be forgiven if they make all their payments according to terms. When the loan reaches its maturity date in 2036, Applicant and his spouse will be required to make a balloon payment of up to \$249,593. (GE 3.)

In early March 2013, Applicant's spouse was found eligible for a social security disability benefit from July 2011. Applicant and his spouse's two younger sons were each awarded a child benefit from July 2011. Applicant's spouse was paid \$29,060 in retroactive disability payments. Each son received a retroactive benefit payment of \$8,761. Applicant's spouse gave Applicant \$6,000 of her retroactive disability funds to put toward the household bills, and she set aside \$15,000 to pay their taxes. Applicant is currently unaware of the balance of his spouse's bank account, although he believes she still has between \$15,000 and \$20,000 of her retroactive disability award. (Tr. 70-73, 87.) Applicant's spouse has been receiving \$1,794 and their minor sons \$448 each in monthly social security benefits since April 2013. (GE 3; Tr. 60-61.) The funds go toward household expenses, such as food and clothing. (Tr. 61.)

In March 2013, Applicant arranged to repay his son's federal student loan in SOR 1.b at \$131.98 per month in two separate payments of \$79.19 and \$52.79. (GE 3; Tr. 54.) At the DOD's request, Applicant completed a personal financial statement in late March 2013. With his spouse's disability payment (estimated at \$1,730), Applicant reported household income of \$6,943, but he did not include his sons' \$896 in social security child benefits.³ He estimated his household expenses at \$3,440. Monthly debt payments reportedly consisted of his new \$1,347.41 mortgage payment; \$200 towards his son's private student loans (\$100 each on the \$19,237 loan in SOR 1.g and the \$6,278.60 loan

³ Applicant reported his take-home pay from his defense contractor employment at \$5,213 per month, although available pay stubs show deposits of pay totaling \$6,413.84 after deductions, including \$162.16 and \$175.20 every two weeks to repay loans from his 401(k). (GE 3.)

balance in SOR 1.f);⁴ \$435 on the auto lease for his spouse's car; and the \$131.98 in federal student loan payments on SOR 1.b for his son.⁵ (GE 3.)

On March 25, 2013, Applicant paid \$395.94 toward the federal student loan debt in SOR 1.b.⁶ Applicant arranged to repay the \$790.84 credit card debt in SOR 1.e in two installments of \$395.42. (GE 3.) In mid-May 2013, Applicant satisfied the credit card debt (SOR 1.e) and the wireless phone debt (SOR 1.a). (AE A.) He had not kept any paperwork to confirm the wireless phone debt had been paid previously, so he paid it. (Tr. 50.)

In August 2013, Applicant paid around \$1,800 toward his and his spouse's state tax delinquency so that the state would accept installment payments of \$150 per month. (Tr. 63, 86.) As of December 3, 2013, they still owed \$1,554.47 in back state taxes for 2011. (AE A; Tr. 40, 74.) Around late 2012, Applicant began repaying the IRS \$160 per month toward a federal tax delinquency, which had a balance around \$10,000 as of December 2013. (Tr. 81.)

Applicant has continued to make the payments on his son's private student loans to reduce the balances to \$4,478.60 (SOR 1.f) and \$17,437.59 (SOR 1.g) as of November 8, 2013. (AE A.) However, neither Applicant nor his son made the payment due in July 2013 on his son's federal student loan debt in SOR 1.b. As of November 25, 2013, his son's account was past due \$705.14. (AE A; Tr. 54.) Applicant's spouse decided at that time that their son should take over the payments. (Tr. 84-85.) So, with income from his job at a movie theater, their son paid \$300 toward his student loan on December 4, 2013. Applicant testified that this loan is going into forbearance for six months in January 2014 because his son plans to return to college. (AE A; Tr. 55) Applicant's son is seeking another loan to pay for the 1.5 semesters remaining for his degree. If his son is not successful, Applicant plans to use his stock options to pay for his son's schooling. (Tr. 56.) He will do what he has to do to get his son back in school. (Tr. 88.)

Applicant initially had no success in determining the status of the reported federal student loan in collection (SOR 1.c). The lender had a record only of the loan in SOR 1.b. In November 2013, Applicant's son was notified of the second loan that was past due

⁴ Applicant testified that he has been paying \$100 biweekly on each loan (SOR 1.f and 1.g) since around March 2013. (Tr. 68.) He listed only \$200 in monthly payments on those student loans on his personal financial statement. (GE 3.) However, recent balance information for the student loans is consistent with monthly payments of \$200 each on the loans in SOR 1.f and 1.g. With \$3,440 in recurring expenses, the \$1,347 monthly mortgage obligation, and other debt payments of \$1,277 (inclusive of the \$160 IRS payment and the \$150 state tax payment), Applicant should have around \$1,839 in net monthly income. He could not explain where the funds were going.

⁵ The recent billing from the debt servicer for the federal student loan in SOR 1.b (AE A) does not reflect the outstanding balance. As of January 2013, Equifax Information Services was reporting the loan as sold or transferred with a zero balance. (GE 5.) Available documentation does not substantiate the \$11,211 balance reported by Applicant on his personal financial statement.

⁶ Applicant testified that he had to make a down payment of \$1,000 to \$1,200 before the student loan servicer would accept payments. (Tr. 63.) It is unclear whether the \$395.94 payment was part of that down payment or an additional payment.

(SOR 1.c). As of December 2013, his son was in the process of arranging for repayment. (Tr. 57.) Either Applicant or his son has to make six months of payments on the federal student loan in SOR 1.c before the loan servicer will place that loan in forbearance. (Tr. 45.)

Applicant did not make his mortgage payments in September 2013 and October 2013.⁷ (GE 8.) He “kind of let that slip a little bit” because of family issues. His mother-in-law was hospitalized twice before she moved into a nursing home in late October or early November 2013. (Tr. 46.) Due to late payment fees assessed for September 2013 and October 2013, they were billed \$6,028 for the mortgage in mid-October 2013. On November 27, 2013, Applicant made a partial mortgage payment of \$1,444. (AE A.) Applicant is two months behind on his mortgage because he is trying to catch up on other bills that had accumulated, such as the water and tax bills. (Tr. 63.) Applicant borrowed “a couple hundred dollars here or there” from his 401(k) in 2013 “just to make ends meet.” (Tr. 82.) Applicant expects to be caught up on his financial obligations except for his son’s student loans by mid-2014. (Tr. 89.)

Applicant’s spouse is not currently employed. She took photography classes costing about \$4,000 over the past 2.5 years. She paid \$2,800 of the tuition with her disability funds while the rest came out of the household budget. (Tr. 65, 87-88.) She purchased “a couple thousand dollars” worth of filming equipment, but she has yet to earn any income from photography work. (Tr. 65, 91.)

Applicant has not taken any vacations outside of his state in the last few years. His spouse went to Mexico with her friends. Applicant initially testified that he was not sure whether the trip was two or three years ago. He then indicated that it was before his spouse stopped working, so more than four years ago. (Tr. 92-93.) Applicant had no idea what her trip cost them. (Tr. 92-93.)

Applicant’s current supervisor has known him since 2007. Two other co-workers have firsthand knowledge of Applicant’s work performance since 1991 and 1997, respectively. These professional colleagues attest to Applicant’s dedication to his work and his family. They have not observed anything in their interactions with him that lead them to believe Applicant is a security liability.

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

⁷ Applicant testified that per the loan modification agreement, he and his spouse are allowed to be two months late in their payment before it affects the loan modification. (Tr. 90.)

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.

In April 2006, Applicant and his spouse took on a \$358,497 home loan. They were chronically late in their payments on the loan, even before she lost her job in November 2009. Available credit information shows that by August 2011, they were \$46,953 in arrears. Applicant testified that he managed to avoid foreclosure by making payments every few months, although there is no evidence of any payments after August 2010. By February 2013, the mortgage was \$87,000 past due, despite Applicant having borrowed between \$40,000 and \$60,000 from his 401(k) for household expenses in the last three years. His 401(k) withdrawals had tax implications, which led to him and his spouse owing the state \$3,923 and the IRS around \$10,000 in back taxes. The IRS tax debt cannot provide a separate basis for disqualification because it was not alleged, but it shows that Applicant's record of delinquency was more extensive than the SOR indicates.⁸ After Applicant's son withdrew from college in 2010 to help out at home, his loans came out of deferment. Applicant (as cosigner) and his son subsequently defaulted on federal and private student loan debt totaling more than \$60,000. In addition, Applicant had a history of late payments on a credit card account before it was charged off around August 2012 (SOR 1.e). A \$102 wireless phone debt was referred for collection in September 2010 (SOR 1.a). Three disqualifying conditions under AG ¶ 19 are implicated, in whole or in part:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.

Concerning AG ¶ 19(e), it is unclear why Applicant had to borrow between \$40,000 and \$60,000 from his 401(k) to meet household expenses at a time when he was making few, if any, mortgage payments. His son was not in college, so he was not incurring new education costs. Applicant testified that his middle son had multiple knee surgeries in 2010, and that his spouse had some medical issues, but he did not document out-of-pocket medical costs or other necessary expenses that could explain such loans. His spouse had been unemployed since November 2009. While her disability and then unemployment of \$1,700 per month was less than her previous monthly income around \$4,000, but Applicant and his spouse were not paying the mortgage or their son's student loans. There is no evidence that Applicant adjusted their spending to account for her reduced income. Moreover, even if his spouse traveled to Mexico before she lost her job, it is difficult to justify such a discretionary expenditure when they were chronically late in their mortgage payments.

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 has the burden of mitigating the financial concerns. The recency of his delinquency precludes me from favorably considering 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.” In October 2011, Applicant told an OPM investigator that he was modifying his home loan, which he claimed was only 120 days past due. While he is credited with pursuing a modification of his mortgage, it was not finalized until February 2013, and he was two months behind on the modified loan as of December 2013. He made a partial payment of \$1,444 in November 2013 toward a \$6,028 mortgage bill. Concerning his son’s student loans, Applicant was notified during his OPM interview that at least one of his son’s federal student loans had been referred for collection (SOR 1.c). Applicant confronted his son about the default but otherwise did little to address the student loans before 2013. The evidence does not substantiate that he was making payments in 2011, at least not on the federal student loans. Applicant started repaying the loan in SOR 1.b, but he failed to make the payments due in July 2013. His credit card debt in SOR 1.e was not satisfied until May 2013. Payments toward the state tax delinquencies started in August 2013, and he and his spouse still owe a balance of \$1,554 for 2011.

AG ¶ 20(b), “the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances,” is partially applicable. Medical expenses incurred for his middle son’s knee surgeries were non-discretionary, although Applicant did not present enough information about his co-pay liability to fully mitigate the financial judgment concerns under AG ¶ 20(b). Applicant’s spouse’s disability had a significant impact on the household in the loss of her income and in their older son leaving college to help out at home, which led to his student loans no longer being deferred. Yet, the Government credibly asserts lingering concerns about Applicant’s financial judgment. In March 2013, Applicant’s spouse received a lump sum payment of \$29,060 in retroactive social security disability. Their two younger sons each received \$8,761 in child benefits. Only about \$6,000 of the \$46,582 in social security benefits went to Applicant for household expenses. While it was reasonable for his spouse to set aside \$15,000 of the retroactive benefits for taxes, it is difficult to justify the expenditure of any household funds for her photography classes, especially when there was a state tax lien against them. Moreover, even based on Applicant’s reported take-home pay of \$5,213, with the \$2,690 in social security benefits for his spouse and children, Applicant cannot account for \$1,839 in net monthly income. He did not act responsibly when he failed to make, or ensure that his son made, the July 2013 federal student loan payment or when he failed to pay the mortgage in September 2013 and October 2013.

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,” address steps to resolve debts. Applicant started repaying his son’s private student loans and the federal student loan in SOR 1.b before the SOR was issued. Applicant paid the debts in SOR 1.a and 1.e in May 2013. Arrangements to resolve

his and his spouse's state tax delinquencies were not in place until August 2013, apparently because he had to make a lump sum payment before the state would accept installments, but he is credited with making payments to the IRS toward his larger tax debt starting in late 2012. He arranged for a modification of his home loan (SOR 1.d) before the SOR was issued. Yet, the evidence supports only partial application of AG ¶ 20(c) and ¶ 20(d). Applicant has not had the financial counseling contemplated in AG ¶ 20(c). As of December 2013, neither Applicant nor his son had any repayment plan in place to address the \$20,824 federal student loan in collection in SOR 1.c, and he is again behind in his mortgage payments.

AG ¶ 20(e), "the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue," minimally applies, if at all. Applicant disputed the \$102 wireless phone debt in collection (SOR 1.a) on the basis that it had been paid before October 2011. However, he kept no records of the claimed payment, and the debt continued to appear on his credit record as unpaid as recently as January 2013.

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 is a longtime defense contractor employee, who took over the family's finances from his spouse after several accounts became delinquent. Due in part to his procrastination, Applicant was chronically late in his debt payments. He was inattentive to other debts, such as his son's student loans, for which he was legally liable as cosigner. By the time he and his spouse modified their mortgage in February 2013, their home loan was \$87,000 in arrears. Despite few, if any, mortgage payments from August 2010 to February 2013, Applicant borrowed between \$40,000 and \$60,000 from his 401(k) to meet the household expenses. His late payments on those loans led to sizeable tax debts, both state and federal, that he is still repaying.

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

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.

Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Applicant has satisfied in full two of the debts in the SOR. He has repayment arrangements in place for all but his son's federal student loan debt in SOR 1.c. The total outstanding student loan debt for his son exceeds \$50,000. Even so, student loans are not frivolous expenditures. The security concerns raised by the defaults are somewhat mitigated by Applicant's timely payments toward the private student loans in SOR 1.f and 1.g. There is no evidence Applicant has missed any of the payments to the IRS or the state for his delinquent taxes. However, Applicant's failure to keep up with the payments on the federal student loan in SOR 1.b and on his modified home loan within the last six months make it difficult to find that his financial problems are behind him and that he possesses the sound judgment that must be demanded of persons with access to classified information. While it is understandable that Applicant wants the best for his family, he also has an obligation to his creditors to pay his debts on time. Applicant testified that his loan modification is not affected, provided he does not fall more than three months behind in his payments. (Tr. 90.) Water and tax bills apparently were given priority over the mortgage, although available income and expense figures show that Applicant has between \$1,800 and \$2,000 in net income per month, after accounting for the mortgage obligation. While the family faced some stressful circumstances culminating in his mother-in-law moving to a nursing home around early November 2013, there is no evidence that Applicant incurred any unexpected financial liability for her move or her care.

Applicant has been a good employee for the defense contractor. Nevertheless, 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 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:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	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.

Elizabeth M. Matchinski
Administrative Judge