



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



In the matter of:)
)
) ISCR Case No. 12-03790
)
Applicant for Security Clearance)

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: Thomas Albin, Esq.
Christine Huber, Esq.

06/16/2014

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant co-signed on about \$66,163 in student loan debt for his son, who then defaulted on the loans. Applicant could not make the payments because he was paying about \$610 a month toward \$97,000 in parent loans for his children. In February 2014, Applicant settled one of his son’s student loans for \$30,000 with funds withdrawn from his 401(k). Repayment plans exist to settle his son’s remaining student loans, but Applicant depends on overtime income to cover a monthly shortfall of \$1,160. Since December 2013, when Applicant’s spouse was in a car accident, Applicant and his spouse have been delinquent on their mortgage. Applicant’s financial situation remains of security concern. Clearance is denied.

Statement of the Case

On October 1, 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 answered the SOR allegations on October 29, 2013, and he requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA) if his explanation and documentation did not lead to a favorable resolution without further proceedings. On January 29, 2014, 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 February 12, 2014, counsel Albin entered his appearance for Applicant. On March 19, 2014, I scheduled a hearing for April 30, 2014.

I convened the hearing as scheduled. Five Government exhibits (GEs 1-5) and 13 Applicant exhibits (AEs A-M) were admitted into evidence without objection. Applicant and his spouse testified, as reflected in a transcript (Tr.) received on May 12, 2014.

At Applicant's request, I held the record open for post-hearing exhibits until May 14, 2014. Applicant timely submitted, through counsel, three potential exhibits (AEs N-P). In addition, Applicant's counsel argued for the consideration of Applicant's position on his charitable contributions (AE P), in response to concerns raised for the first time by the Government in oral closing argument at the hearing. Department Counsel was granted until May 23, 2014, for comment or objections. On May 27, 2014, the Government expressed no objection to the admission of AEs N-P. The documents were accepted as full exhibits.

Summary of SOR Allegations

The SOR alleges under Guideline F that as of October 1, 2013, Applicant owed a student loan charged-off balance of \$41,367 (SOR 1.a), a charged-off loan of \$16,550 (SOR 1.b), and a collection debt of \$31,601 (SOR 1.c). In his *pro se* Answer, Applicant admitted the three debts, and explained that he had co-signed education loans for his daughter (SOR 1.a) and his son (SOR 1.b and 1.c). When he answered the SOR, Applicant explained that he had attempted to modify his home loan, which was not in arrears, and then to refinance his mortgage to free up income to repay his children's student loans. However, the lender disapproved his refinancing. In addition, his spouse had taken a second job to assist with resolving the debts. At his hearing, Applicant amended his Answer to indicate that the three loans alleged in the SOR were co-signed for his son.

Findings of Fact

After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 59-year-old high school graduate. He served on active duty in the U.S. military as an aviation mechanic at the enlisted ranks between December 1975 and

November 1978. From January 1979 to June 1998, he served at the sergeant rank (E-6) in the National Guard, except for six months in 1991, when he was reactivated for active duty service in Operation Desert Shield. Applicant will begin receiving a pension of roughly \$900 a month from the National Guard in April 2015. (GEs 1, 2; Tr. 116-122.)

Applicant began his civilian employment in the defense industry as a sheet metal mechanic with his employer in February 1979. In February 1998, Applicant was laid off with recall rights due to a work shortage.¹ (GEs 1, 2; Tr. 58-61, 64-66.) In addition to collecting unemployment for 26 weeks, he worked in assembly and inspection under temporary staffing agency contracts. (Tr. 66-67.) In March 2000, he was recalled to work by his defense contractor employer. (GEs 1, 2; Tr. 68.) He is eligible to retire, but he plans to work until age 64 or 65. (Tr. 111.) Applicant has held a DOD Secret clearance since April 2003 (GEs 1, 3), and he became a working leader about four years ago. (Tr. 58-61.) He has not violated security procedures. (Tr. 142.)

Applicant and his spouse married in July 1978. (GE 1; Tr. 24.) They have three adult children, a daughter and two sons. Applicant also has a 27-year-old son with another woman. (GEs 1-3.) In 2000, Applicant's and his spouse's older son attended a prep school for one year at a cost to Applicant of \$12,000, which Applicant covered through a withdrawal from his 401(k). The remaining \$8,000 cost was covered by his son's football scholarship. (Tr. 98-99, 152-153.)

Applicant and his spouse moved into their current residence in 2002. (GE 1.) In October 2002, they opened their current mortgage, taking on joint loan debt of \$300,700. Their mortgage payment was 30 days late in May and June 2010, but it had a current balance of \$247,527 as of December 2011. (GE 5.)

After some research into his ancestry, Applicant anticipated an inheritance payment from a local Native American tribe, which he expected would cover college costs for his children. His spouse, who owned a hair salon, relocated her business to an area of perceived growth. (GE 3.) Expecting income from both sources (which did not materialize), Applicant supported his children emotionally and financially when they chose to attend out-of-state colleges. Applicant's daughter attended college from 1998 to 2003, when she earned her bachelor's degree in criminal justice administration. (AE J.) Her tuition costs were partially paid with her mother's savings. (Tr. 26, 44, 78.) Applicant also took on student loan debt in his name, totaling \$102,557.59 between September 2000 and March 2004, for his children's education. He made payments and consolidated balances to close those accounts. On January 26, 2006, he opened a new loan of \$63,307.34. (GE 5; AE G.) In February 2011, he began repaying the interest only on the debt at \$326.27 per month. As of November 2011, his payment was past-due \$652.54 (GE 3), although he brought his payments current by January 2012. As of April 2014, he was paying \$402 per month in interest on a principal balance of \$73,001. (AE G; Tr. 134.) He borrowed another \$24,000 in his name for his children's educations. As of August 2013, he was paying \$284.52 per month (\$111.25 on one loan and \$173.27 on the other) toward that student loan debt,

¹ Applicant was on strike from June 1988 to November 1988. (Tr. 63.)

which then totaled about \$25,013.29. Applicant's monthly payment on the second loan increased to \$206.14 in late February 2014. (GE 3.) Applicant has been able to make the payments because of his overtime earnings at work. (Tr. 96.) Applicant does not regret opening the parent loans for his children's educations. In hindsight, he would have made wiser decisions about how he would have financed their schooling. (Tr. 97-98.)

Applicant also co-signed his children's student loans. In September 2002, Applicant co-signed a \$12,067 student loan for his daughter (not alleged in SOR). Applicant co-signed several student loans for his and his spouse's younger son between July 2004 and August 2009, including federal student loans totaling approximately \$26,125 (SOR 1.c) issued through his son's college, and on their son's private student loans of \$23,872 in August 2007 (SOR 1.a), and \$16,166 in September 2008 (SOR 1.b). (GE 5; AE O.)

Applicant's children did not make the payments when the loans came due, and the creditors eventually pursued Applicant because of his contractual liability. Applicant initially directed the creditors to his children, who were primarily responsible for repayment. (Tr. 132.) As of January 2011, his daughter's loan was \$2,887 past due on a \$15,549 charged-off balance in collection. (GE 5.) On November 9, 2012, the creditor offered to settle the balance (then \$15,909.61) for \$6,519.89, provided the funds were received by December 24, 2012. (GE 3.) In December 2012, he took out a loan of \$15,000 from his 401(k) to resolve his daughter's student loan debt. Applicant had previously borrowed \$10,000 from his 401(k) in June 2011 to cover the property rental payment of about \$600 for his spouse's salon when she was out of work after surgery. Applicant has been repaying his two 401(k) loans at \$104.31 per week. (GE 3; AE I; Tr. 122-123, 135, 145-146.)

Applicant and his spouse gave their younger son between \$5,000 and \$10,000 for his college expenses in addition to signing onto his loans. (Tr. 43.) Their son withdrew from college in May 2010, and he moved back home until 2013. When his student loans came due, he did not have a full-time job.² (AE O; Tr. 153-154.) In July 2011, the student loan debt in SOR 1.c was reportedly in collection with a \$31,601 balance reported by the assignee. As of November 2011, the private student loan in SOR 1.a was \$1,112 past due on a reported balance of \$35,604. As of December 2011, the private student loan account in SOR 1.b was 90 days past due on a \$16,550 balance. (GEs 1, 5.)

On December 22, 2011, Applicant completed and certified to the accuracy of an Electronics Questionnaire for Investigations Processing (e-QIP) to update his Secret security clearance eligibility. In response to the financial delinquency inquiries, Applicant reported student loan debt of \$11,768 for his daughter (2002 loan, not alleged), and about \$34,661 (SOR 1.a) and \$16,671 (SOR 1.b) for his younger son. Applicant explained that his children were unable to keep up with their payments, and as the co-signer, he has been trying to help out as best as he can. (GE 1.) A check of Applicant's credit on December 29, 2011, revealed additional student loan delinquency of \$31,601 (SOR 1.c). (GE 5.)

On January 16, 2012, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM), partially about the delinquent student loans.

² Applicant's son paid \$50 for rent but nothing toward food or utilities in the house. (Tr. 156.)

Applicant acknowledged the previously disclosed past-due student loans for his children, and he volunteered that there could be more student loans on which his children had fallen behind, but he did not have the details. When confronted about the \$31,601 past-due student loan debt on his credit record (SOR 1.c), Applicant expressed his belief that it may be a duplicate of his son's student loan. Applicant explained that he was already paying \$600 a month on loans he took out for his children's educations. He asserted that his personal financial situation was in good standing in that he was not behind on any of his financial obligations. Due to the recession, his children had difficulty finding employment, so they were unable to pay their student loans. He could meet his parent loan obligations but not their student loans. (GE 3.)

On July 26, 2013, the DOD CAF asked Applicant about the status of the student loans co-signed for his daughter and younger son. On August 21, 2013, Applicant submitted an offer from his daughter's creditor to settle her loan for \$6,519.89. He then indicated that a \$6,287.70 balance had been settled for \$2,567.31. Applicant admitted that no repayment arrangements had been established for his son's loans. Applicant completed a Personal Financial Statement showing \$3,612.88 in net monthly household income after deductions, \$1,908.04 in monthly expenses, and \$2,865.14 in debt payments (\$2,254.35 to the mortgage and \$610.79 to his parent loans). Applicant's estimated monthly shortfall of \$1,160.30 did not include overtime income, which he "shuffles in" to help him get through each month. (Tr. 137-139.) He was being mentored about his finances, working with his entire family to pay down debts, and pursuing a modification of his mortgage to lower the monthly payment. Applicant added that his younger son was employed full time and had begun addressing his financial responsibilities. (GE 3.) Student loan records show that some of his son's Stafford student loans were in forbearance as of December 2010, in repayment as of January 2012, deferred as of May 2012, and in repayment as of December 2013. (AE O.)

On September 26, 2013, Applicant's and his spouse's application to modify their mortgage loan was denied. Their credit record, as reported by Equifax, showed no signs of imminent default. (AE K.) Applicant and his spouse then applied to refinance their loan to lower their interest rate from 5.28% to 2-3%, for the extra income to assist their son to bring his student loans out of default. Their application to refinance was also denied, apparently because she needed to address a \$1,000 credit card debt on her credit record. (Tr. 32-33, 48, 75.) On October 1, 2013, the DOD CAF issued a SOR to Applicant because of the three delinquent student loans that he had co-signed.

On December 31, 2013, the student loan lender identified in SOR 1.b cancelled the \$16,166.81 balance of his son's loan and issued Applicant a 1099-C for tax year 2013. (SOR 1.b). On April 25, 2014, Applicant and his son were notified of the charge-off. The creditor offered to settle a reported balance of \$16,654.30 for \$4,200. (AEs E, F.) Applicant apparently paid a lump sum of \$2,000 from \$1,500 of his and his spouse's income tax refund and his overtime earnings. (Tr. 89-91, 128.) Applicant entered into a repayment plan with the creditor to make weekly payments of \$146.80 in May 2014, \$183.50 in June 2014, and \$183.50 in July 2014, to fully settle the debt. (AE L; Tr. 9-94.)

Applicant asked the student loan lender in SOR 1.a about a possible settlement of his son's loan. (Tr. 81.) On February 12, 2014, Applicant withdrew \$31,244.40 from his 401(k) account at work.³ He had approximately \$100,000 in the account before the withdrawal. (AEs I, M.) On February 25, 2014, Applicant settled in full the private student loan through a final settlement payment of \$30,000. (AEs C, D; Tr. 82.)

Applicant's daughter is a federal government employee, who has taken responsibility for her student loan debt. (AE J; Tr. 80.) Applicant's son, who now works in retail sales full time (Tr. 106), never intended for his father to repay his student loans (SOR 1.a-1.c). (AE N.) On January 9, 2014, Applicant's son retained a debt service to negotiate all of his federal student loan accounts (SOR 1.c, \$29,172 total principal balance) in return for a service fee of \$700. (AEs H, O.) On March 27, 2014, his application for consolidation of his federal direct student loans was accepted. The consolidation covers at least three Stafford subsidized student loans with an aggregate principal balance of \$10,230. (AE O.)

Applicant and his spouse's adjusted gross income for 2012 was \$76,914. Applicant and his spouse's joint adjusted income was \$103,809 in tax year 2013, in part because of the \$16,167 in debt cancelled by the creditor in SOR 1.b. They itemized \$13,069 in charitable contributions in tax year 2012 and \$13,384 in tax year 2013. They received federal tax refunds of \$4,090 for 2012 and \$3,461 for 2013. (AEs A, B). Applicant's and his spouse's tithing are important to them, and they are active in their church. (AE P; Tr. 70-72.) Applicant's spouse continues to operate her own hair salon. She takes home an estimated \$2,000 a month from her business when she is working full time. (Tr. 28, 36.) Other than student loan payments, Applicant and his spouse do not provide any ongoing financial assistance for their children. (Tr. 29.) Applicant takes advantage of overtime available to him at work. He worked overtime almost every weekend in 2013 and every Saturday since January 2014. (Tr. 69, 74, 110.)

Applicant handles most of the family's finances. (Tr. 38, 73.) Applicant's spouse is responsible for paying their home loan from her separate account. Applicant gives her the funds to cover the shortfall from her income and the mortgage. (Tr. 125-126.) Applicant's spouse has not made their \$2,100 monthly mortgage payment since late December 2013. She was out of work for a week or two after a car accident in mid-December, and she has reduced her work hours since then because of her therapy. In addition to taking home about \$500 less in income per month, Applicant's spouse incurred about \$500 in out-of-pocket medical costs. She also had to replace her 2007 model-year car, which was destroyed in the accident. She used \$7,900 from their insurer as a down payment, and opened a car loan that is being repaid at \$363.50 per month. (Tr. 33-40, 107-08.) Applicant's spouse filed a civil lawsuit against the driver who caused the accident. (Tr. 108.)

Applicant testified that had he known that his mortgage was so far behind, he would not have settled the student loan debt in SOR 1.a with a \$30,000 lump sum payment. Keeping his home is a priority for him. (Tr. 82, 109, 127.) Applicant and his spouse have

³ Applicant testified that his employer would allow him to withdraw only \$24,000 in a calendar year, so he had to go through the plan administrator. (Tr. 83.)

been working with their lender to modify their mortgage and add the \$10,000 arrearage to the end of their home loan. (Tr. 47.) In October 2014, Applicant will be eligible to withdraw funds from his 401(k) without limit as to the amount. Applicant intends to honor his financial obligations. (Tr. 85-86.)

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 articulated 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.

Anticipating a financial windfall based on his ancestry and an increase in household income from the relocation of his spouse's hair salon business, Applicant borrowed more than \$100,000 in his name for his and his spouse's daughter's and their younger son's college educations. In addition, he co-signed about \$12,607 in student loan debt for his daughter and about \$66,163 in student loan debt for his son. His daughter's student loan was delinquent as of December 2011, but the debt has been addressed, partially through Applicant's 401(k) loan in 2012. However, neither Applicant nor his son was in a position to make payments on his son's student loans when they came due. As of the SOR date in October 2013, his son's private student loans in SOR 1.a and 1.b were in default. His son's federal student loan debt in SOR 1.c was in collection as of July 2011. Some effort was made to bring some of the Stafford loans into repayment status as of January 2012, but no evidence of any consistent payments was presented. As co-signer, Applicant is contractually liable for the debt. AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations," are established.

As for the mitigating conditions, AG ¶ 20(a), "the behavior happened so long ago, was so infrequent, or occurred under circumstances that it is unlikely to recur and does not cast doubt on the individual's current, reliability, or good judgment," does not apply to such recent delinquency. The federal student loan debt in SOR 1.c was placed for collection in 2011. The student loan in SOR 1.b was charged off in the amount of \$16,166.81 in late December 2013. The student loan in SOR 1.a had a past-due balance exceeding \$30,000 by the time Applicant settled the debt for his son in February 2014.

Applicant knew when he co-signed the educational loans for his children that he would be liable if they failed to make the payments. Even so, college is a justifiable expense, and Applicant had no control over the limited employment opportunities for his son, who withdrew from college without a degree in 2010 and did not earn enough before 2013 to cover his student loan repayment obligations. AG ¶ 20(b) is partially implicated:

(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.

However, Applicant raised concerns about his financial judgment by taking on student loan obligations well beyond what he and his spouse could reasonably afford on their household income. He acted in part in anticipation of an inheritance payment and of increased business for his spouse. Without some proof of a legitimate claim to the inheritance, or of a more favorable business climate in his spouse's new location, I cannot conclude that Applicant acted fully responsibly when he took on all those loan obligations. With limited exception, he had been repaying his parent loans on time, but he has been paying the interest only on the \$69,991 principal balance of a parent plus loan since 2011. As of July 2013, Applicant was relying heavily on overtime earnings to cover a monthly shortfall of \$1,160 in his household expenses, which included \$610 in parent loan payments.

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 efforts to resolve delinquent debts. Both are implicated, although to lesser or greater extent depending on the loan. Applicant and his spouse tried to modify their mortgage in September 2013 to free up funds for their son's student loans, but their application was rejected because their home loan was not in arrears. Their application to then refinance was denied because his spouse had an outstanding credit card debt on her record to rectify.

On December 31, 2013, the \$16,166.81 principal loan balance of the student loan in SOR 1.b was cancelled, and the lender issued Applicant a 1099-C for tax year 2013. After reporting the cancelled debt as income on his and his spouse's joint federal income tax return for tax year 2013, Applicant agreed to pay \$4,200 to settle the debt balance, reportedly at \$16,654.30 as of April 25, 2014. Cancellation of debt is not a substitute for good-faith payments, but the debt is likely to be settled in late July 2014.

Applicant's son has taken responsibility for repaying his federal student loans (SOR 1.c), which had a \$29,172 principal balance as of May 2014. On January 9, 2014, he hired a debt service, and his application to consolidate his federal student loans had been accepted as of May 1, 2014. However, it would be premature to fully apply either AG ¶ 20(c) or AG ¶ 20(d) without a track record of debt payments.

In February 2014, Applicant paid \$30,000, with funds withdrawn from his 401(k), to settle his son's student loan in SOR 1.a. The \$30,000 payment exceeded the initial loan amount, although with interest, the debt was settled for less than its current balance. AG ¶ 20(c) and AG ¶ 20(d) apply to the debt in SOR 1.a, despite the belated settlement. His son is the primary obligor and should have taken responsibility once he began working a full-time job in 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).⁴

Applicant accepted contractual liability for thousands in student loan debt for his children. He has been paying his parent loans for several years now. He knew as of his December 2011 e-QIP that his daughter and son were behind in their student loan payments, and when contacted by the creditors about the debts, he declined to pay them because they were his children's primary responsibility. When it became clear that the loans were adversely affecting his clearance eligibility, he took steps to address the debt in SOR 1.a. As of May 2014, the student loan debts in SOR 1.b and 1.c have not been settled, although repayment arrangements are in place for those loans.

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 agreed to pay \$146.80 per week in May 2014 and then \$183.50 per week in June and July 2014 to settle his son's student loan in SOR 1.b. Applicant appears to be able to make those payments only because he and his spouse are not paying their mortgage. They have relied for some time on Applicant's overtime to meet their expenses and debt payments. On 48 hours of regular pay and four hours of overtime, he grossed an extra \$327.24 before taxes (GE 3), which just about covered his and spouse's reported shortfall at \$1,160 per month as of August 2013. Applicant's overtime earnings have not been sufficient to cover the loss in his spouse's income since her car accident in December 2013. While the mortgage delinquency appears to be an unfortunate consequence of his spouse's accident, it reflects the tenuous nature of Applicant's financial situation.

In October 2014, Applicant will no longer be constrained by withdrawal limits from his 401(k), which has a balance around \$70,000. His finances are likely to improve in April 2015, when he starts to receive his retirement pay, estimated around \$900 a month, from the National Guard. However, the decision about the security clearance eligibility of an applicant must be based on present circumstances and not on future events that may or may not occur, such as whether his spouse prevails in her lawsuit against the person who caused her car accident. Applicant's credit record shows little reliance on consumer credit

⁴ 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.

accounts, but he and his spouse have yet to pay the \$1,000 consumer credit debt on her record which needs to be resolved for their mortgage lender to consider refinancing their mortgage. In hindsight, Applicant would have handled the funding of his children's schooling differently, but he is now living with the burden of \$97,000 in parent loan debt. Should his son fail to make his payments on SOR 1.c under the debt consolidation, Applicant has not shown that he will be able to resolve the debt in the near future. Applicant is already repaying two loans from his 401(k).

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.). For the reasons noted above, 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 eligibility at this time.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant

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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Elizabeth M. Matchinski
Administrative Judge