DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 14-02290
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

11/16/2016

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Decision

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MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant and his spouse became delinquent on their primary mortgage, on his home-equity loan, and one of Applicant's credit cards, which was charged off for $10,637. They have reduced his past-due credit card balance to $1,635 and their mortgage has been rated as current since mid-2013. Applicant failed to make the payments on his seriously delinquent home-equity loan after it was restructured in late May 2015. As of February 2016, his loan was 120 days past due on a $49,245 balance. The financial considerations concerns are not fully mitigated. Clearance is denied.

Statement of the Case

On March 28, 2015, 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; 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.

On April 17, 2015, Applicant answered the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On February 23, 2016, 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 February 25, 2016, I scheduled a hearing for March 23, 2016.

I convened the hearing as scheduled. Four Government exhibits (GEs 1-4) and seven Applicant exhibits (AEs A-G) were admitted into evidence without objection. Applicant and his spouse witness testified, as reflected in a transcript (Tr.) received on March 31, 2016.

Findings of Fact

The SOR alleges under Guideline F that Applicant was past due $24,786 (SOR ¶ 1.a) and $21,736 (SOR ¶ 1.c) on mortgage loans as of March 28, 2015. Additionally, an account had been charged off for $10,637 (SOR ¶ 1.b), and a $99 medical debt was in collection (SOR ¶ 1.d). When Applicant answered the SOR, he admitted the debts, but indicated that he was making payments toward his home loans and the credit card debt. Applicant also stated that the medical debt was satisfied as of January 25, 2014. After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 52-year-old software engineer, who earned his bachelor's degree in 2012. (Tr. 74.) He has been employed by the same defense contractor since March 2002 and seeks his first DOD security clearance. Applicant and his current spouse married in March 2000. They have two children, now ages 15 and 13. Applicant's wife has two sons, ages 25 and 23, from a previous marriage. Applicant had previously been married from June 1991 to September 1994, but he and his first wife had no children together. (GE 1.)

Applicant moved into his spouse's home after their marriage. (Tr. 63.) In June 2003, he and his spouse obtained a $150,000 first mortgage, to be repaid at $1,834 per month for 15 years. In November 2004, they refinanced their mortgage through a loan of $233,000 (SOR ¶ 1.c). Their monthly payments decreased to $1,657. In June 2006, Applicant obtained a $40,000 home-equity loan, to be repaid at $399 per month (SOR ¶ 1.a), to put an addition on their home. (Tr. 39.) Applicant and his spouse had a history of allowing both their mortgage loan and his home-equity loan to become past due 90 days. (GEs 2-4.)

In January 2008, Applicant's spouse started her own counseling practice. (AE C; Tr. 49, 55.) She had about $15,000 saved for start-up costs for computer equipment, furniture, and office space rental. (Tr. 52-54.) For the first couple of years, she did some on-call work for her previous employer to supplement her income as a sole proprietor. (Tr. 54.) Even so, Applicant's and his spouse's annual household income declined from almost $100,000 to $60,000. (Tr. 33, 38.) Around May 2010, the younger of Applicant's stepsons went to live

with his father for about a year. Applicant's spouse's ex-husband stopped paying child support, which had been around $1,000 per month. (Tr. 49, 55-56.) Applicant and his spouse had counted on the child support to meet their household expenses, including paying her student loans. (Tr. 42, 57-58.) Applicant's stepson moved back into the household a year later at age 18, but he did not attend college full time, and Applicant's spouse did not pursue her ex-husband for child support. (Tr. 56.)

Applicant's credit card account in SOR ¶ 1.b was charged off for $10,637 in November 2010. (GEs 3, 4.) Applicant claims that his account was current before it was cancelled automatically "by a computer decision" with a demand for the full balance, which he could not afford. (Tr. 35.) Available credit reports show the account as closed by the consumer with a last payment in June 2010. (GEs 3, 4.)

Applicant and his spouse began falling seriously delinquent on their mortgage in the summer of 2011. (GE 4; AE G.) Around October 2011, Applicant's father-in-law began having health problems that led to his death in January 2012. Applicant's spouse lost income because she was unable to see clients when traveling and caring for her father. (AE C; Tr. 29-31, 59-60.) After her father died, Applicant's spouse acquired a business partner. In the last three years, their business income has tripled. (Tr. 61-62.)

On February 21, 2013, Applicant certified to the accuracy of a Questionnaire for National Security Positions (SF 86) incorporated within an Electronic Questionnaire for Investigations Processing. In response to an inquiry about whether he was currently receiving any assistance for financial difficulties, Applicant indicated that he and his spouse were working with their mortgage lender to get their loan "back on track with refinancing." Applicant claimed that their mortgage lender had offered a refinancing option with terms not clearly described. Concerning any delinquencies involving enforcement in the last seven years, Applicant disclosed that court action had been taken against him for a credit card in default for $10,000 (SOR ¶ 1.b), but the creditor is limited under state law to collecting a maximum of $7,500. Applicant indicated that he paid $2,000 toward the debt to date with his monthly payments currently at $100. (GE 1.) Applicant and the creditor apparently agreed to the repayment term before a final judgment. (Tr. 44.) Applicant also disclosed on his SF 86 that he traveled to Europe for tourism for less than a week in the fall of 2012. (GE 1.)

As of January 2013, Applicant and his spouse were $21,736 delinquent on their mortgage (SOR ¶ 1.c). Applicant's home-equity loan was $19,989 past due on a balance of $36,198 (SOR ¶ 1.a). Applicant's $10,637 credit card delinquency (SOR ¶ 1.b) and a $99 medical debt from February 2013 (SOR ¶ 1.d) were in collection status. (GE 4.)

In December 2012, Applicant and his spouse were offered a trial repayment plan by their mortgage lender to suspend foreclosure of their joint home loan. Under the trial plan, they paid approximately $1,665 per month for three months. (AE B.) In March 2013, their loan was modified for $224,833 and extended for 17 years. (Tr. 64.) Applicant's and his spouse's mortgage loan was transferred in September 2013. As of January 2014, they were paying $939 plus escrow payments per month on a modified mortgage balance of $222,902. (GEs 2, 3; AEs C, G.) As of July 2015, their monthly mortgage payment was

almost $1,668. They were behind one payment. (AE B.) Applicant's spouse testified that the company holding their mortgage did not receive payment within the 15-day grace period (Tr. 69), but she did not explain the reason. As of late November 2015, their loan was rated as current. (GE 2.)

As of January 2014, Applicant had made no payments toward his home-equity loan delinquency, which had increased to $24,786 (SOR ¶ 1.a). (GE 3.) When he answered the SOR in April 2015, Applicant indicated that he began payments in January 2015 under a three-month trial period to renegotiate the loan. Loan modification documents show Applicant's loan was modified in late May 2015 for a new loan of $50,605. The original maturity date of July 2021 stayed the same. Applicant was informed in the loan modification agreement that his monthly payment would increase and that the future monthly payments would be shown on his monthly statements. His new payment of $896 per month was considered by Applicant and his spouse to be unaffordable. (GE 2, AE G; Tr. 34, 65.) Applicant's spouse, who handles the family's finances and dealt with the lender about the loan, suggests that Applicant had no choice but to agree to the loan modification or forfeit the opportunity to renegotiate the terms. (Tr. 65.) As of December 2015, the loan was reportedly $2,689 past due on a balance of $49,245. (GE 2.)

In January 2016, Applicant authorized a debt resolution company to negotiate for him toward restructuring his home-equity loan. Applicant arranged for the $3,600 in retainer fee to be paid on credit in two installments due in January 2016 and February 2016. (AEs C, D, F.) Applicant's spouse negotiated a lower service fee of $3,000, which she paid. (Tr. 70.) As of March 2016, the lender had authorized the debt resolution company to act on Applicant's behalf. (AE B.) Applicant's spouse testified to her understanding that Applicant will be offered a new three-month trial plan, and if those payments are made, his loan will be restructured for a monthly repayment less than the current scheduled payment of $896. (Tr. 71.) No payment has been made on the home-equity loan for several months. Applicant and his spouse were advised by the debt resolution company not to contact the lender or make any payments on the loan. (Tr. 72.)

As of July 28, 2015, Applicant owed $2,355 on the credit card debt in SOR ¶ 1.b. (AE A.) He continued to make payments to reduce the balance to $1,635 as of February 23, 2016. (AE E.) About the $99 medical collection debt, Applicant has discrepantly indicated that the debt was satisfied as of January 2014 (Answer; AE C), but also that the agency was no longer collecting, as it had been "pulled back." (Tr. 35. 43.) He recently learned it was for service at a hospital. (Tr. 43.)

Applicant's spouse rehabilitated her student loans for her master's degree. (Tr. 44, 64.) Applicant and his spouse opened a car loan in September 2014 for $14,755, to be repaid at $353 per month. (GE 2; Tr. 44.) Available credit information shows that they were 30 days behind in their car payments in February 2015, April 2015, June 2015, September 2015, and January 2016. (GE 2; AE G.)

The older of Applicant's spouse's sons has lived on his own since graduating from college in 2013. Applicant's spouse and her ex-husband split their son's college costs. Her

younger son has lived with her for the past four or five years. Applicant and his spouse pay for his food but not his other expenses, such as his cell phone, his car, and his car insurance. (Tr. 61.)

By March 2016, Applicant's spouse and her business partner had outgrown their office space and were looking to purchase a building for their practice. They now have seven employees. (Tr. 67.) According to Applicant's spouse, her business is becoming the largest private counseling practice in her state. (Tr. 62.)

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 concerns about financial considerations are set forth 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.

When Applicant applied for security clearance eligibility, his and his spouse's joint mortgage was $21,736 past due (SOR ¶ 1.c). He was $19,989 past due on a $40,000 home-equity loan obtained in June 2006 (SOR ¶ 1.a). He claims that he was current on his credit card in SOR ¶ 1.b before his account was closed automatically by computer action. Available credit records show that the account was closed by the consumer, and that his account was delinquent before it was charged off for $10,637 in November 2011. A $99 medical debt from February 2013 (SOR ¶ 1.d) was placed for collection. Two disqualifying conditions, AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Concerning mitigation of Applicant's delinquent debts, 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. All of the debts in the SOR were seriously delinquent in 2013. Despite a creditable attempt at restructuring in May 2015, Applicant's home-equity loan was again in default as of his security clearance hearing in March 2016 with no repayment plan established to address the $49,245 balance.

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 applicable to the extent that his and his spouse's household finances were compromised by a loss of her income while she was caring for her ill father between October 2011 and January 2012. Her father's illness and precipitous decline in his health were unexpected circumstances of the type contemplated within AG ¶ 20(b). Applicant has a less compelling case with respect to the income loss caused by his spouse's decision to start her own counseling practice. While their household income declined considerably, from approximately $100,000 to $60,000, his spouse assumed the

risk that the demand for her services may be less than anticipated or that start-up expenses may exceed what she planned. The $1,000 in lost child support income was apparently unexpected. Yet, child support is not intended for household expenses that are incurred for expenses unrelated to caring for a child, such as his spouse's student loan payments.

Applicant has not acted fully responsibly toward his creditors. Despite Applicant's consistent employment with a defense contractor since 2002, the mortgage went unpaid for most if not all of 2012. Applicant (or his spouse on his behalf) made no payments on his home-equity loan for several years. Presumably, the income that should have gone toward the mortgage and home-equity loans went to establish his spouse's business. They also had college costs for his stepson, who graduated from college in 2013. Applicant's spouse split the education expenses with her ex-husband, but the record contains no detail about those costs. Applicant reported on his SF 86 that he took a short vacation to Europe in the fall of 2012. It is difficult to justify that expense when they were behind approximately $40,000 on their home loans. To suspend foreclosure action on their primary mortgage, Applicant and his spouse made payments required to modify their loan in 2013. However, despite the reported success of her counseling business in recent years, they were not so proactive in addressing Applicant's home-equity loan. In response to the SOR, Applicant indicated that effective January 1, 2015, they began payments under a trial period to rehabilitate the loan. Applicant was successful in obtaining a modification of the loan in late May 2015, but the loan was again delinquent as of his hearing in March 2016. There is no evidence of any recent unforeseen circumstances that could reasonably explain or extenuate his failure to comply with the terms of the modified loan. Applicant's spouse testified that the lender added the delinquency to the loan without extending the term, so the monthly payment almost tripled. Their loan has been delinquent since September 2015. In the hope of a resolution more advantageous to them, they have not resumed repayment on the advice of a debt resolution firm retained at a cost of $3,000 to negotiate new terms with the lender.

Applicant's and his spouse's successful modification of their mortgage in 2013 partially mitigates the financial considerations concerns. Some concern arises because they were late in paying their mortgage for July 2015, but their account has been rated as current since the modification. Also in his favor, Applicant has paid $100 a month for the past few years to reduce the credit card delinquency in SOR ¶ 1.b to $1,635 as of February 2016. The mortgage and credit card delinquencies have been sufficiently resolved 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," to those debts.

AG ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," is also implicated in that his consistent repayment of those two debts is evidence of good faith. Although Applicant and his spouse testified that they began addressing their delinquent debts starting with their mortgage, it cannot fairly be said that Applicant initiated repayment of the mortgage in SOR ¶ 1.c or the credit card debt in SOR ¶ 1.b. He began repaying the credit card delinquency only after the creditor filed for a

judgment. As for the mortgage, their trial payments to modify the home loan were in response to a notice from the bank that their mortgage was seriously delinquent and that they had to respond by December 19, 2012, to suspend foreclosure action.

Concerning Applicant's home-equity loan, the loan modification agreement Applicant signed in May 2015 does not include any specifics about the trial payments that Applicant (or his spouse for him) apparently paid before the lender would modify his loan. It is unclear whether Applicant contacted the creditor about a possible modification or whether, as with the mortgage, he acted in response to a notice of default. It is debatable whether Applicant's lender could reasonably expect him to pay $896 per month on a loan restructured because of reported financial hardship. In early 2016, Applicant's spouse paid a $3,000 service fee for a debt resolution company to negotiate a lower monthly payment for Applicant on the loan. It is unclear whether those fees were paid using a credit card or whether they had cash assets on hand that could have been used to make the $896 payments during the fall of 2015 before Applicant formally retained the services of the debt resolution firm to negotiate on his behalf. The financial considerations concerns are not fully mitigated under AG ¶ 20(c) or AG ¶ 20(d) without a repayment plan in place and a record of consistent compliance with the plan. About the $99 medical debt in collection, Applicant expressed his understanding as of April 16, 2015, that the debt was satisfied as of January 25, 2014. At his hearing, he testified conversely that collection was no longer being pursued. He testified that he only recently discovered that the debt was owed to a hospital, and he expressed an intention to contact the medical provider. The debt has apparently not been paid. His failure to take timely steps to address such a small debt does not inspire confidence in his ability or willingness to make regular payments toward his sizeable home-equity debt.

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).[1] The analysis under Guideline F is incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is not required to establish that he has paid off each debt in the SOR, or even that the first debts paid be those in the SOR.[2] However, there must be adequate

[1] 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.

[2] The DOHA Appeal Board stated in ISCR Case No. 07-06482, decided on May 21, 2008, in part:

assurances that his financial problems are not likely to persist. Applicant has made insufficient progress toward resolving his home-equity loan that was modified for $50,605 in late May 2015 and was 120 days past due as of February 2016. An intention to make payments provides insufficient guarantee, especially when it is unclear what he can afford and he has previously ignored the debt for years. The DOHA Appeal Board has consistently held that promises to pay debts do not substitute for a track record of timely payments and other financially responsible behavior. *See e.g.*, ISCR Case No. 14-14565 (App. Bd. Sep. 18, 2015), citing ISCR Case No. 14-03069 (App. Bd. Jul. 30, 2015). It is also noted that Applicant's recent credit reports (GE 2; AE G) show a history of late payments on an automobile loan opened in September 2014. The account has been 30 days past due five times since February 2015, including in January 2016. Neither Applicant nor his spouse explained why they have been unable to make some of their debt payments on time, including their mortgage payment for July 2015. Applicant's spouse has rehabilitated her student loans, but there is no evidence of the amount of her student loan debt or monthly payments that apparently burden their household.

A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of the evidence to determine if a nexus exists between established facts and a legitimate security concern. For the reasons already noted, concerns persist about Applicant's present financial stability to where I am unable to conclude that it is clearly consistent with the national interest to grant him 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

In evaluating Guideline F cases, the Board has previously noted that the concept of "'meaningful track record' necessarily includes evidence of actual debt reduction through payment of debts." *See, e.g.,* ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. *See, e.g.,* ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate[s] that he has ". . . established a plan to resolve his financial problems and taken significant actions to implement that plan." *See, e.g.,* ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. *See* Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. *See, e.g.,* ISCR Case No. 06-25584 at 4 (App. Bd. Apr.4, 2008). Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Elizabeth M. Matchinski
Administrative Judge