DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 14-04435
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: Donna Price, Esq.

11/22/2016

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant defaulted on a couple of his credit card accounts during a marital breakup. The high costs of his divorce and other expenses compromised his finances for several years, but he also did not give priority to addressing his collection accounts when his income stabilized. His handling of his finances continues to engender security concern. Clearance is denied.

Statement of the Case

On February 26, 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 for Determining Eligibility for Access to Classified Information (AG) effective within the DOD on September 1, 2006.

On May 27, 2015, Applicant answered the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On October 9, 2015, 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 22, 2016.

On March 2, 2016, Counsel for Applicant entered her appearance and requested a continuance of the hearing. Department Counsel had no objection, and I cancelled Applicant's hearing. On April 22, 2016, I rescheduled the hearing for May 18, 2016.

I convened the hearing as rescheduled. Four Government exhibits (GEs 1-4) and six Applicant exhibits (AEs A-F) were admitted into evidence without objection. A letter forwarding discovery of the Government exhibits to Applicant was accepted as a hearing exhibit (HE 1) for the record but was not admitted into evidence. Applicant and a private attorney handling some of his financial matters testified, as reflected in a transcript (Tr.) received on May 27, 2016. After his cross-examination of Applicant, Department Counsel moved to amend the SOR to add a new allegation based on information known to the Government before the hearing. I sustained Applicant's objection and did not grant the amendment.

I held the record open after the hearing until June 17, 2016, for Applicant to supplement the record. At the request of Applicant's Counsel and with no objection from the Government, on June 17, 2016, I extended the deadline for post-hearing submissions to July 1, 2016. On July 1, 2016, Applicant submitted his affidavit (AE G) and an affidavit authored by the attorney who testified at the hearing (AE H). Applicant also submitted several documents pre-marked as Supplemental Exhibits I-IV (AE Supp. I-IV). The documents were admitted without objection.

Procedural and Evidentiary Ruling

After cross-examination, Department Counsel moved to amend the SOR at the hearing to add a new allegation under Guideline F, as follows:

> 1.h. You have failed to timely file your federal and state of [name omitted] income tax returns from 2002 through 2012 as required.

Counsel for Applicant objected in that the information was known to the Government before the hearing and Applicant could reasonably presume that the information did not raise a current security concern because it was not alleged. Department Counsel acknowledged that the tax filing issues were a matter that was in the file, although the Government may not have known all the details. While ¶ E3.1.17 authorizes the administrative judge or either party to amend the SOR at the hearing to conform to the evidence, ¶ E3.1.3 requires that Applicant be provided with a written SOR that shall be as detailed and comprehensive as the national security permits. Department Counsel's position that the security clearance application constituted adequate notice to Applicant

that his taxes could become a disqualifying issue was not persuasive in light of ¶ E3.1.3, so I sustained Applicant's objection.

Summary of SOR Allegations

The SOR alleges that Applicant owed charged-off debts of $15,589 (SOR ¶ 1.a) and $11,375 (SOR ¶ 1.b) and five debts in collection totaling $47,880 (SOR ¶¶ 1.c-1.g) as of February 26, 2015. In his May 27, 2015 *pro se* response to the alleged debts, Applicant admitted the $15,589 charged-off debt in SOR ¶ 1.a and the collection debts of $7,848 (SOR ¶ 1.f) and $16,201 (SOR ¶ 1.g). He denied the debts in SOR ¶¶ 1.b, 1.c, and 1.d because he could not match the debt amounts to his financial records. He denied the debt in SOR ¶ 1.e of $608 for cable services, indicating that his ex-wife incurred the charges around 2010. He expressed his intention to settle the account in the next 60 days to clear his credit record.

Findings of Fact

After considering the pleadings, exhibits, and transcript, I find that Applicant was an authorized user on the charged-off credit card debts in SOR ¶ 1.a and ¶ 1.b; that the collection debt in SOR ¶ 1.c is duplicated in SOR ¶ 1.g; and that the collection debt in SOR ¶ 1.d is duplicated in SOR ¶ 1.f. Additional findings of fact are as follows.

Applicant is a 54-year-old college graduate. After working in the banking and mortgage industries, Applicant co-founded a business in August 1997 that was reorganized into its current privately-held corporate entity in 2011. (AE B; Tr. 90-96, 99, 116.) He is the chairman and chief executive officer (CEO) of the company, which had 23 employees as of May 2016. (Tr. 100, 134.) His ownership stake in the predominantly commercially-oriented company is about 20%. (Tr. 116, 137.) The company had a contract with the DOD and was a cleared facility operating under a temporary waiver of the requirement that the CEO be security clearance eligible. (Tr. 110, 136.)

Applicant was married to his first wife from June 1985 to March 1994. (GE 1; Tr. 100-101.) He married his second wife in January 1998. They separated in May 2010 and were divorced in May 2015. Applicant has been involved in a cohabitant relationship since October 2010. Applicant has a son now age 27 from his first marriage and a daughter now age 14 from his second marriage. (GE 1; AE G; Tr. 101-102, 138.)

In April 1998, Applicant's second wife purchased a beach property that served as their primary residence. The property was held by a realty trust with his spouse as trustee. (AE C.) In 2002, Applicant's and his second wife's annual household income was almost $230,000, with $180,000 of that income coming from her employment as the exclusive marketing and sales agent for a local residential home developer. (AE B.) Applicant accepted no salary from his company, and their household income fluctuated based on the profits from his business and her income. They had no problems meeting their financial obligations, including mortgage and credit card debts, and private school tuition for his son totaling $72,800 from 2003 through 2006. (AE C; Tr. 206.) In December 2005, Applicant

obtained a mortgage on their residence for $552,000. The mortgage loan payments were around $3,008 per month. In December 2006, Applicant obtained a mortgage of $250,000, to be repaid at approximately $2,066 per month for a second home in the mountains. (GEs 2-4.) In September 2007, Applicant, his second wife, and their daughter moved to a home leased by his wife in a new locale. (GE 1; AE G.) His and his spouse's household income totaled a high of $315,651 in 2007. (AE C.)

Applicant's son started college in the fall of 2007, and Applicant paid his son's tuition and room and board totaling $22,311 that semester. (AEs B.12, C.) From 2008 through 2011, Applicant paid an additional $188,546 in college expenses for his son. (AE C.)

Around 2008, Applicant's second wife began having drinking and mental health issues that led to financial stress and ultimately the dissolution of their marriage. (Tr. 107.) In 2009, Applicant's business was struggling because of the downturn in the economy. He met payroll for his employees, but took no salary for himself. (Tr. 109.) His household income declined from $200,900 in 2008 to $102,458 in 2009. The mortgage on the beach home was delinquent 30 to 60 days from November 2009 to March 2010. In May 2010, Applicant and his second wife separated, and he moved into the beach property. During protracted divorce proceedings over the next five years, his second wife neglected her family responsibilities to their daughter and did not contribute financially toward addressing any of their marital debts, including real estate property expenses. (AEs B, C.) As of September 2010, the mortgages on both properties were being serviced by the current loan servicer. Applicant's monthly mortgage payments were $1,472 on the loan for his primary residence and $921 on the second home. He was late on both mortgages for several months in 2011. (GE 4.)

In September 2011, Applicant was granted physical custody of his daughter, then almost 9 years old. He incurred a court-ordered fee for a guardian ad litem for his daughter during a "horrendous" but successful battle over sole legal custody. In 2012, Applicant began taking a salary from his company. His income of $98,699 in 2012 was not enough to pay all his bills and the fees associated with the divorce, which he estimated cost him over $210,000.[1] He had to borrow from friends to pay his guardian ad litem fees.[2] (Answer; AE C.) In April 2012, he paid state tax liens of $3,286 and $21,666 that were filed in December 2011 and October 2010. (GE 4.) He also had some child care expenses for his daughter. (Answer.) In January 2013, his second wife lost her visitation rights after she arrived at school in an intoxicated state to pick up her daughter. (Answer; Tr. 103.)

Applicant was paid a salary of $307,700 from his business in 2013. (AE C.) On December 23, 2013, Applicant certified to the accuracy of a Questionnaire for National

[1] In an accounting of "extraordinary hits to income," Applicant listed $141,973 in legal fees for his divorce, guardian ad litem fees totaling $30,870, and $3,000 for a psychiatric evaluation related to the divorce. (AE C.) Applicant testified that he had $3,000 to $5,000 in out-of-pocket costs for counseling for his daughter after he and his second wife separated in May 2010 because of his ex-wife's treatment of their daughter. (Tr. 105.)

[2] Applicant indicated in response to the SOR that he was twice held in contempt, in 2012 and 2013, because he could not pay the guardian ad litem fees, and he had to borrow short-term loans from friends to pay the fees to avoid being imprisoned.

Security Positions (SF 86) incorporated within an Electronic Questionnaire for Investigations Processing. In response to a financial record inquiry into whether he had failed to file or pay federal, state, or other taxes in the last seven years, Applicant indicated that late state returns were filed in November 2013 for tax years 2007 and 2008, but that past-due taxes had been paid in full. As for his federal income taxes, Applicant indicated that he reviewed his finances to identify any open compliance issues, and that he had filed his past-due tax returns "for the tax years 2004-2012" to the satisfaction of the Internal Revenue Service (IRS). He explained that he owed $8,247 to the IRS for tax year 2008 because his accountant had credited him for tax payments toward future taxes owed and those credits were disallowed by the IRS.[3] He expressed his intention to pay the assessment within the next 30 to 45 days. Concerning financial record inquiries into any delinquency involving routine accounts in the last seven years, Applicant listed outstanding credit card debts of $2,200, $19,000, $11,000 (SOR ¶ 1.c, same debt in SOR ¶ 1.g), and $160; a $20,000 delinquency on the mortgage for his second home that he resolved in July 2013; a cable services debt of $600 (SOR ¶ 1.e) in dispute because his second wife was supposed to assume responsibility for the account; some $18,000 in "erroneously assessed" state tax debt for 2002 and 2003 that he paid in 2011; and a $50,000 delinquency on his mortgage for his primary residence, which was pending modification with $40,000 in an established escrow account. He attributed his consumer credit delinquencies to his contentious divorce, reduced income, and extraordinary expenses and indicated that he was awaiting resolution of his divorce to address his outstanding credit card balances. (GE 1.)

As of February 8, 2014, Applicant's credit report showed that his mortgage on his primary residence was past due $49,189 and in foreclosure status. He had been told in 2012 that he was a good candidate for a mortgage modification, but the loan servicer lost documentation that he provided. (Tr. 32-34.) The mortgage on his second home was $3,090 past due.[4] Applicant owed collection balances of $15,034 (SOR ¶ 1.c, same debt in SOR ¶ 1.g) and $8,107 (SOR ¶ 1.d, same debt in SOR ¶ 1.f). A zero balance was reported on the credit card account listed for $19,000 on his SF 86 after his account had been placed in collection. Applicant was listed as an authorized user on two credit card accounts charged off for $15,589 (SOR ¶ 1.a) and $11,375 (SOR ¶ 1.b). (GE 4.)

[3] Applicant explained the tax assessments as follows: "The dispute came along the lines that because I didn't file the tax returns timely; after three years, if you've overpaid your taxes, you can't carry that overpayment into subsequent years." He claimed he overpaid $22,000 in state income taxes that he could not recoup because of the statute of limitations. (Tr. 163-165.) As for his failure to file timely tax returns for several years, Applicant testified, "I mean, I'm essentially ashamed to admit it, but my house was kind of turmoil." (Tr. 166.) He made tax payments and thought that he could catch up on filing his tax returns eventually. (Tr,167.)

[4] 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 Section 6.3 of the Directive. *See*, *e.g.*, ISCR Case No. 03-20327 (App. Bd. Oct. 26, 2006); ISCR Case No. 09-07219 (App. Bd. Sep. 27, 2012). Applicant's mortgage delinquencies cannot provide a separate basis for disqualification because they were not alleged, but they are relevant to assessing Applicant's financial judgment generally and his efforts in mitigation.

Applicant took a salary of $169,230 in 2014. He resolved about $12,607 in collection debt, including some federal and state tax liabilities. (AE C.) As of September 2014, he had filed a formal dispute about a $690 cable services debt in collection since July 2013 (SOR ¶ 1.e). He had made no progress toward resolving the credit card collection debts in SOR ¶ 1.c (same debt in SOR ¶ 1.g) or SOR ¶ 1.d (same debt in SOR ¶ 1.f). The accounts on which he was an authorized user (SOR ¶¶ 1.a and 1.b) were still on his credit record with charged-off balances of $15,589 and $11,375. Applicant was making timely payments on a flexible spending credit card that had a balance of $12,427. (GE 3.) He used the $40,000 set aside in an escrow account to bring the mortgage on his residence temporarily current around July 2014. (GE 2; Tr. 35.)

Applicant's mortgage on his second home was in foreclosure proceedings twice before he brought the account current in 2014. (Tr. 127.) Excepting March 2015, when he was 30 days behind, he has made his payments on time. (GE 2; AE D; Tr. 32.) Applicant is nonetheless disputing the account because he was charged for lender-paid insurance that he did not need. (Tr. 127.)

The mortgage on Applicant's primary residence was reportedly $9,477 past due as of late May 2015. (GE 2.) Applicant paid the mortgage on his residence through February 2015, despite not receiving any mortgage statements since June 2014. (Tr. 35-36, 111.) In late August 2015, he mailed a sixth request to the loan servicer asking that the address on the mortgage account match that of the property. In September 2015, he submitted a seventh request for a change of mailing address on his account and a third request for a mortgage statement. In October 2015, Applicant's ex-wife resigned as trustee and appointed Applicant as her successor on the trust holding ownership of his primary residence. (AE C.) In November 2015, he made his eighth request for a change of address and his fourth request for a mortgage statement. Having received no response to any of his several inquiries about his account, Applicant informed the loan servicer in December 2015 of his intention to legally challenge the debt and its authority to collect the mortgage. (AE E.) By then, his mortgage was reportedly $13,820 past due. (AE A.) As of May 2016, he had made no mortgage payments on his home in over a year. (Tr. 30.) Applicant is holding a $12,000 check that was sent to him by the loan servicer, which he presumes came out of the escrow account. (Tr. 114.) His debt resolution attorney has told him to not pay the mortgage before he receives requested documentation from his loan servicer. (Tr. 37.)

The collection agency holding the debts in SOR ¶ 1.c (same debt in SOR ¶ 1.g) and SOR ¶ 1.d (same debt in SOR ¶ 1.f) reported respective balances of $16,841 and $8,950 as of May 2015. (GE 2.) When his divorce became final in May 2015, Applicant began paying $3,093 per month in alimony to his second wife. (AE C.) His ex-wife is supposed to pay him $1,300 per month in child support, and she has paid only 25% to 30% of her obligation. Applicant subtracts the child support due him from his alimony payment. (Tr. 108.)

On salary income of $270,484 in 2015 (AE C), Applicant in late August 2015 offered to pay $1,350 and $1,580 to settle the collection debts in SOR ¶ 1.c and ¶ 1.d.

Applicant also offered $4,500 to settle two lines of credit.[5] (AE Supp. Ex. II.) The only response received to his proposed settlements was a request for financial information from the entity collecting the debt in SOR ¶ 1.d. (Tr. 150-151.)

Around December 2015, Applicant retained the services of a debt resolution attorney for assistance in resolving the mortgage on his primary residence (AE E) and verifying the debts in SOR ¶1.c (same debt in SOR ¶ 1.g) and ¶ 1.d (same debt in SOR ¶ 1.f). (AEs G, H.) On Applicant's behalf, the attorney advised him not to settle the debts before the creditors and balances were verified. His attorney challenged the high interest rate on the account in SOR ¶ 1.c. The attorney advised Applicant that the creditor no longer has a legal right to collect the debt because it refused to verify it.[6] (AE H.) As of May 2016, the debt was not on Applicant's credit report (AE A), but there is no evidence that it was paid. In response to the attorney's inquiry about the debt in SOR ¶ 1.d, the collection agency provided documentation of a financial judgment. As of his security clearance hearing, Applicant intended to file a motion to vacate the judgment in July 2016. He contests the collection agency's legal right to enforce the debt. (AE H; Tr. 50-51.) Both the original creditor and the collection agency were claiming a $9,332 collection balance as of May 2016.[7] (AE A.) Applicant has authorized his debt resolution lawyer to settle the debt, but he is hopeful that filing a lawsuit will lead to legitimate settlement discussions. (Tr. 131-132.) On May 2, 2016, Applicant paid $689.83 to satisfy the cable services debt in SOR ¶ 1.c. He wanted to clear it from his credit record even though he believes it was his ex-wife's debt. (AE Supp. Ex. I.)

Applicant had approximately $20,741 in checking and savings deposits as of late April 2016. Applicant drives a 2013 model-year sedan that he bought outright in January or February 2016. (Tr. 160.) His fiancée drives a 2011 model-year vehicle that he purchased for her in June or July 2015. (Tr. 118, 160.) He estimated the value of his vehicle at

[5] Applicant's letter to the collection law firm references two lines of credit opened with a bank. While he believes SOR ¶ 1.f and ¶ 1.g pertain to those debts, he provided file numbers that do not match the debts alleged in SOR ¶ 1.f and ¶ 1.g. Available credit reports show that the collection account with a $7,848 balance as of August 2014 (SOR ¶ 1.f, initially $6,910) has the same account number as SOR ¶ 1.d with a $8,590 balance as of May 2015. As of May 2016, the balance was $9,332. (AE A.) Similarly, the collection account with a $16,201 balance as of August 2014 (SOR ¶ 1.g, initially $7,672) has the same account number as the collection account in SOR ¶ 1.c. The lines of credit do not appear to be alleged in the SOR, and it is unclear whether he is being pursued for any balances on the lines of credit accounts. In November 2015, the collection law firm notified Applicant that it was no longer representing the creditor as to the matters held by the bank. (AE Supp. Ex. II, III.) As for the lines of credit, Applicant obtained the accounts in the early 1990s to invest in real estate. (Tr. 96-98.) Applicant testified that "somehow or other, either through way of a guarantor or some signature somewhere, [he] apparently had some responsibility. But it was news to [him] that [he] had this problem until it actually surfaced on the SOR." (Tr. 98-99.) After evaluating all the information presented, I am not persuaded that SOR ¶ 1.f and ¶ 1.g pertain to those lines of credit, notwithstanding Applicant's testimony.

[6] Applicant's attorney discrepantly has indicated that the account had been paid (Tr. 66), and that it has been abandoned. (AEs G, H.) The credit card account, which is showing as paid, was opened in April 2006. It appears to be a different account from the collection debt at issue. The account placed for collection (SOR ¶ 1.c) was opened in December 2006. That account was on his credit record with a zero balance but after being charged off for $7,521 and placed for collection with the agency in SOR ¶ 1.g. (GE 2.)

[7] Applicant's credit reports do not show a judgment, but it does not mean that a judgment was not issued.

$41,199 and her vehicle at $29,442 as of late April 2016. (AE C.) As of May 15, 2016, Applicant reported net monthly discretionary income of $3,277, after deducting the mortgage payments at $1,806 and $854, his routine expenses, and $366 toward his flexible spending credit card account, which had a balance of $12,200. (AEs A, C.) Given Applicant was not paying the mortgage on his primary residence, he admitted that his net monthly income after payments was more on the order of $5,000. (Tr. 157-158.) The credit bureaus were reporting no outstanding tax liens on his record as of May 2016. (AE A.)

Applicant's cohabitant fiancée is a nurse, who ceased nurse practitioner study in August 2010 to become a full-time surrogate mother to Applicant's daughter. She witnessed Applicant's emotional, financial, and physical struggles, but also his dedication and determination during his custody battle for his daughter. Applicant has entrusted his fiancée with handling his personal finances since 2010. She has no concerns about Applicant's personal integrity. He has been executing his plan to resolve the financial issues that are still outstanding. (AE B.)

Applicant's daughter attends a private school that costs him around $5,000 a year. (AE B; Tr. 139.) Applicant does not provide any financial support for his son. (Tr. 139.)

Work and Personal Character References

A member of the board of Applicant's company for the past eight years previously worked in the securities industry, including as president of an option trading firm. As a board member and investor in the company, he has developed a business and personal relationship with Applicant. He knows that Applicant went through "an extremely nasty divorce" and that Applicant suspended his compensation from their company for a time to ensure that the company would survive and its other employees would be compensated. (AE B.)

The chief technology officer for Applicant's firm since January 2004 witnessed a "long history of mistreatment" of Applicant by Applicant's former business partner. Applicant amicably negotiated his co-founding partner's separation from the company in a settlement that was financially rewarding to both his former partner and the company. The chief technology officer saw firsthand Applicant's ability to deal with his divorce and business setbacks while maintaining his drive and positive attitude and providing a safe and nurturing environment for his daughter. As CEO since 2014, Applicant skillfully managed the company through several liquidity crises without incurring any significant debt and without diluting ownership equity. The chief technology officer, who has a security clearance, has no hesitation in recommending Applicant for security clearance eligibility. (AE B.)

Another officer at Applicant's company, who works closely with Applicant on commercialization issues, has observed Applicant make "the effort to do the right things at all times," even when it could have created a financial setback for the company. He indicated that Applicant shared the full details of the financial security concerns with the company's executive committee months ago. This co-worker believes that the financial

issues that surfaced in the background check were likely due to the behavior of Applicant's ex-wife and that the majority of them have been resolved. (AE B.)

The office manager at Applicant's company since 2007 describes Applicant as "an intelligent, highly driven executive determined to make his company a success." She attests to Applicant being well respected by his employees. She observed him to conduct himself with "utmost integrity" during his difficult divorce proceedings. (AE B.)

A certified public accountant (CPA), who has provided tax and consulting services to Applicant's company from 2000 to 2010 and since then by others in his CPA firm, has also developed a personal friendship with Applicant. He is not privy to Applicant's personal financial condition but understands that Applicant has had some financial difficulties. He considers Applicant to be of high moral character. (AE B.)

Applicant also has the support of several other friends with experience in the financial sector. A senior mortgage officer with a bank has known Applicant since 1988. When they met, Applicant was a director and the executive vice president and chief financial officer of a bank that became one of the largest mortgage lenders in the state. This mortgage officer has had a personal friendship with Applicant for over 20 years. He has found Applicant to be very trustworthy and always "fair and equitable with matters involving any financial transactions." (AE B.)

A friend of Applicant's since high school likewise endorses security clearance eligibility for Applicant. A financial management professional, he owns a company that services about 2,000 business clients. He invested in Applicant's company in 2005 and again in 2007. Applicant has given this friend no reason to question his integrity. (AE B.)

A self-employed businessman in the international insurance business was introduced to Applicant about five years ago by a business colleague. He volunteers with Applicant on the board of a unique nature school where Applicant has demonstrated "a tactful, clear thinking, intelligent as well as dynamic set of business and interpersonal skills." He believes Applicant is working diligently to resolve the financial issues of security concern while also focusing on expanding his business reach. (AE B.)

The chief executive officer of a construction company came to know Applicant through their work starting in 2004 to revitalize the commercial area at the beach in their town. As an investor and friend, he has witnessed Applicant's "scrupulous attention to fiscal austerity." He described Applicant as having a "middle class lifestyle." In his opinion, Applicant's "determination, pride and patriotism would preclude any possibility of adverse activities in regard to national security." (AE B.)

The principal and senior vice president for a design, branding and marketing company was introduced to Applicant through business channels in 2011. He and his spouse have become close friends with Applicant and his fiancée, and they spend time together on a weekly basis. He has benefitted from Applicant's business acumen and has

witnessed Applicant's generosity to local charities and church. He attests to Applicant being highly regarded in their community. (AE B.)

A friend now well established in the information technology industry previously worked for Applicant when they were both in banking in the early 1990s. This friend witnessed Applicant's "very difficult and trying divorce," and Applicant's focus on the well-being of his daughter, "regardless of the effects on him financially." This friend is aware of the security clearance issues raised against Applicant and recommends him for a clearance. (AE B.)

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.

In March 2015, Applicant received the SOR notifying him that the Government had concerns about his security clearance eligibility for owing allegedly $74,844 in delinquent, non-mortgage consumer debt. The evidence shows that two of Applicant's debts were duplicated in the SOR (¶ 1.c same as ¶ 1.g, and ¶ 1.d same as ¶ 1.f), and Applicant was an authorized user and therefore not legally liable on the accounts identified in SOR ¶¶ 1.a and 1.b.[8] Applicant owed delinquent debt, which due to collection fees and interest totaled approximately $26,121. Two disqualifying conditions, AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations," apply. Although Applicant's income is now sufficient to pay the debts, AG ¶ 19(a) is implicated because he did not have the funds to pay his debts in 2010.

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," applies only in that the credit card and cable services delinquencies were not incurred recently. The credit card delinquencies remain unresolved despite Applicant being on notice since March 2015 that they were of security concern and the issuance of a court judgment for the debt in SOR ¶ 1.d. Applicant's inordinate delay in addressing the debts of security concern raises doubts about his judgment.

Applicant has a case for partial mitigation under AG ¶ 20(b), "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or

[8] Concerning the account in SOR ¶ 1.b, Applicant provided evidence showing that he had his own card, but the primary account holder was his second wife. In response to Applicant's inquiry, the creditor informed him on September 23, 2015, that he was not responsible for the balance of the account and that the credit reporting agencies had been asked to delete the account from his credit file. (AE F.)

separation), and the individual acted responsibly under the circumstances." Applicant had no control over the downturn in the economy, and the evidence shows that he took no salary from his business before 2012 so that his employees would be compensated for their work. He underwent an acrimonious divorce and protracted custody battle that was emotionally distracting and financially costly. He understandably gave priority to ensuring a safe and stable home for his daughter over paying the accounts that went to collection. He also submitted as "extraordinary hits" to his income the costs for his son's college, including some $82,935 in education expenses for his son after his martial separation.

AG ¶ 20(b) also requires that an applicant act responsibly to address his debts once his or her situation had stabilized. Applicant's salary increased substantially from $92,306 in 2012 to $307,700 in 2013, although he was still apparently trying to catch up financially. Applicant's credit reports show that he satisfied $25,052 in tax levies in April 2012. He reportedly paid $115,931 in legal fees and $18,500 in guardian ad litem fees in 2013 and indicated in his answer to the SOR that he was held in contempt in 2013 for not paying his guardian ad litem fees, and he had to borrow short-term loans from friends to avoid jail. He was paid a salary of $169,230 in 2014, when unexpected "hits" to his income totaled only $11,257. In 2015, he earned $270,484 and yet made no payments toward the debts in SOR ¶¶ 1.c, 1.d, or 1.e. He made no payments on those accounts despite being on notice that they were of security concern, even after his divorce was finalized. His settlement offers in August 2015 carry little weight in mitigation under AG ¶ 20(b). He offered to pay only $1,350 and $1,850 on the debts in SOR ¶ 1.c and ¶ 1.d, less than the balances owed on the accounts when they were placed for collection. His net monthly discretionary income is approximately $5,000, in part because he is not paying the mortgage on his residence. While it may be financially prudent for him to want verification of the debt balances, he has not been sufficiently proactive in addressing the debts of security concern. Had he acted earlier, he might have had a persuasive case in mitigation under the financial considerations guideline.

Applicant's payment of the cable services debt (SOR ¶ 1.e) through his attorney in early May 2016 resolves that debt. Yet, it would be premature to apply either 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," or AG ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," to his credit card delinquencies (SOR ¶¶ 1.c and 1.d). Applicant's offer to pay less than a quarter of the original debt balances, especially when he can afford to send his daughter to private school and purchase for cash in the last year vehicles worth $29,442 and $41,199, undermines his claim of a good-faith effort to resolve the debts. In response to a request for financial information from the creditor collecting the debt in SOR ¶ 1.d, Applicant retained a debt resolution attorney in December 2015 for assistance in verifying the creditors and debt balances. He learned that a judgment had been entered against him for the debt in SOR ¶ 1.d, and as of late May 2016, he planned to move in July 2016 to have that judgment vacated. His debt resolution attorney has variously claimed that the debt in SOR ¶ 1.c has been paid and that it has been abandoned. The debt was no longer on Applicant's credit report as of May 2016. However, the DOHA Appeal Board has held that "[t]he fact that a debt no longer appears on a credit report does not establish any

meaningful, independent evidence as to the disposition of the debt." *See* ISCR Case No. 14-03612 (App. Bd. Aug. 25, 2015). As of the close of the record, Applicant had not shown that the debts are being resolved or that he is not legally liable for the debts. In the event that the debts are no longer legally collectible, this would not preclude me from considering the debts for their security significance. See ISCR Case No. 12-04806 (App. Bd. Jul. 3, 2014.) The fact that Applicant has an ability to repay his debts does not ally the concerns about his judgment and reliability raised by his handling of his credit card collection debts. Irrespective of whether he could afford to make payments, he had an obligation to keep himself apprised of his accounts and debt balances. His disregard of the credit card debts is particularly troubling, given his experience in the banking industry and as a business executive.

AG ¶ 20(d) has limited applicability in this case to those accounts on which Applicant was an authorized user (SOR ¶¶ 1.a and 1.b) and those accounts that are duplicate listings (SOR ¶¶ 1.f and 1.g). AG ¶ 20(e) provides:

> (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.

Applicant has not made sufficient progress toward resolving the credit card delinquencies in SOR ¶ 1.c and ¶ 1.d to overcome the financial considerations security concerns. His failure to satisfy debts and meet financial obligations indicates lack of judgment and an unwillingness to abide by rules and regulations, which raises unresolved questions about his reliability, trustworthiness, and ability to protect classified information. *See* AG ¶ 18.

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] 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.

[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.

A determination of any 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 all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern. Applicant earned a reputation at work and among his friends for always doing the right thing. This reputation is difficult to reconcile with his handling of his personal financial affairs. Given his considerable business acumen and experience in the banking and mortgage industries, Applicant should have known that debts may become difficult to track after they are placed for collection because they are transferred or purchased. He bears some responsibility for the high collection balances that accrued because of his failure to take timely steps to address his past-due accounts. While he understandably does not want to pay a debt without knowing whom to pay, the fact that some of his debts have not been resolved is attributable in part to his inattention to his accounts. Applicant acted similarly with regard to his tax returns. His failure to file timely income tax returns for several years led to his payment of approximately $25,000 in delinquent taxes that he cannot recoup, but which he asserts were erroneously assessed.[10]

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).The concern at this juncture is not whether Applicant is financially overextended. His income appears to be more than sufficient to cover his expenses. However, Applicant has displayed an unacceptable tendency to put his personal financial interest ahead of his obligations, whether to his credit card lenders, his mortgage lender, or tax authorities. For the reasons noted above, I am unable to find that it is clearly consistent with the national interest to grant Applicant 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
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant

[10] The SOR does not allege the resolved tax liens or the delinquency on his home loan, as discussed in footnote 4, there are limited circumstances under which conduct not alleged in an SOR may be considered. The tax and mortgage issues were not considered for disqualification purposes. They are illustrative of Applicant's handling of his finances generally.

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