



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



In the matter of:)	
)	
(Redacted))	ISCR Case No. 15-02820
)	
Applicant for Security Clearance)	

Appearances

For Government: Rhett C. Petcher, Esq., Department Counsel
For Applicant: *Pro se*

09/15/2017

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant incurred more than \$40,000 in delinquent debt. His defaulted federal student loans have been repaid through involuntary wage garnishment, but several seriously past-due accounts are still outstanding. He failed to demonstrate financially responsible behavior in several aspects. Clearance is denied.

Statement of the Case

On May 16, 2016, 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 (EO) 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.

Applicant filed an initial response to the SOR on June 18, 2016, which was incomplete in that he failed to respond to all the SOR allegations. On July 29, 2016, Applicant answered the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On October 28, 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 November 1, 2016, I scheduled a hearing for November 30,

2016. On November 4, 2016, I was notified by Applicant's employer that he was out of work on temporary disability. On November 21, 2016, I cancelled the hearing because of Applicant's medical status.

On March 10, 2017, I rescheduled Applicant's hearing for March 28, 2017. On March 27, 2017, Applicant informed me that he would not be able to attend his scheduled hearing because of the death of a family member. I granted him a continuance, and on April 19, 2017, I issued an amended notice scheduling his hearing for May 25, 2017.

While this case was pending a hearing, the Director of National Intelligence (DNI) issued Security Executive Agent Directive 4 establishing the National Security Adjudicative Guidelines (AG), which would become applicable on June 8, 2017, to all adjudications for national security eligibility or eligibility to hold a sensitive position. On May 18, 2017, I provided Applicant with a copy of the updated Directive incorporating the new AG which supersede the adjudicative guidelines implemented in September 2006. I advised him that I would be adjudicating his security clearance eligibility under the new AG,¹ and that I would consider a request to leave the record open after his hearing for additional information if necessary in light of this change in the AG.

At the hearing on May 25, 2017, six Government exhibits (GEs 1-6) were admitted in evidence. Letters from Department Counsel, of September 22, 2016, and of May 17, 2017, forwarding discovery of the Government's exhibits to Applicant, were marked as hearing exhibits (HEs 1-2) but were not admitted in evidence. Applicant testified, as reflected in a transcript (Tr.) received on June 6, 2017.

I held the record open initially for one month after the hearing for post-hearing submissions from Applicant. On June 15, 2017, and June 20, 2017, Applicant submitted six and three images respectively, which were admitted without objection as Applicant exhibits A and B. On June 23, 2017, Applicant submitted Credit Karma entries concerning his student loans (AE C) and about the absence of any public records on his credit report (AE D). AE D was entered into the record without objection. Department Counsel expressed concerns about AE C in that it did not reflect the current status of Applicant's student loans. In response, Applicant indicated on June 26, 2017, that he would submit a fax to me showing that the loans had been paid in full. I admitted AE C, and advised Applicant that I would keep the record open through June 30, 2017, for the student loan record. I sent an email to Applicant on June 29, 2017, informing him that I had not received the expected documents. He submitted no additional documentation by the final deadline.

Summary of SOR Allegations

The SOR alleges under Guideline F that, as of May 16, 2016, Applicant owed \$48,766 on delinquent accounts: judgment debts of \$605 from July 2014 (SOR ¶ 1.a), and \$1,230 (SOR ¶ 1.b) and \$1,250 from September 2012 (SOR ¶ 1.c); five delinquent utility and cable services debts totaling \$8,737 (SOR ¶¶ 1.d-1.g, 1.r, and 1.dd); two wireless phone debts in collection for \$1,010 (SOR ¶ 1.z) and \$397 (SOR ¶ 1.aa); \$2,050 to a former landlord (SOR ¶ 1.h); \$3,705 on a charged-off furniture loan (SOR ¶ 1.w); two federal student loans of \$4,196 (SOR ¶ 1.o) and \$2,334 (SOR ¶ 1.p); \$1,043 in online tuition (SOR ¶ 1.e); car loan deficiencies of \$13,559 (SOR ¶ 1.l) and \$1,112 (SOR ¶ 1.q); a \$721 collection debt (SOR ¶ 1.y); a \$361 insurance debt (SOR ¶ 1.bb); an \$883 charged-off balance (SOR ¶ 1.s); four debts totaling \$3,749 for home furnishing rentals (SOR ¶¶ 1.m, 1.n, 1.t, and 1.x); and six medical debts in collection for \$1,824 (SOR ¶¶ 1.i-1.k, 1.u-1.v, and 1.cc).

¹ Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case.

When Applicant answered the SOR, he denied the judgment debt in SOR ¶ 1.b; the student loan debts in SOR ¶¶ 1.o and 1.p; the charged-off debts in SOR ¶¶ 1.q, 1.r, 1.t, 1.w, 1.x, and 1.y; and the collection debts in SOR ¶¶ 1.z, 1.aa, 1.cc, and 1.dd. Applicant admitted the debts in SOR ¶¶ 1.a, 1.c, 1.d-1.k, 1.l (but indicated the balance was \$9,000), 1.m-1.n, 1.s, 1.u-1.v, and 1.bb. Applicant's admissions are accepted as findings of fact. Additional findings of fact follow.

Findings of Fact

After considering the pleadings, exhibits, and transcript, I find that the debt in SOR ¶ 1.h is the same debt in SOR ¶ 1.c; and the debts in SOR ¶¶ 1.m and 1.n are updated balances of the debts in SOR ¶¶ 1.x and 1.t.

Applicant is a 35-year-old inspector with a defense contractor. He started working for his current employer in March 2003 as an outside machinist at \$10.81 an hour. He received cost-of-living increases, and he received a raise in 2007 when he went from second class to first class machinist. In 2016, he was promoted to an inspector position with an increase in his hourly wage from \$29 to \$30.61. He has held a DOD secret security clearance for most of his employment. (GEs 1-2; Tr. 48-50, 54.)

Applicant was married to his first wife from May 2003 to June 2010. She moved out while he was on a short-term temporary duty (TDY) assignment in 2006, but she would not sign divorce papers. (Tr. 47.) In July 2006, Applicant and his current wife began a cohabitant relationship. They married in September 2016 and have two children ages six and eight. (GEs 1-2; Tr. 47-48.)

On May 1, 2013, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86) to renew his security clearance eligibility. He listed one past-due debt of \$300 from April 2012 when utility services were not turned off after he vacated an apartment. (GE 1.)

Checks of Applicant's credit on May 7, 2013 (GE 3), June 30, 2014 (GE 4), and March 28, 2016 (GE 5), revealed that three financial judgments had been entered against him and that several other debts had been placed for collection or charged off. On May 16, 2016, an SOR was issued to Applicant alleging that he owed \$48,766 on 30 delinquent accounts. The details of his indebtedness follow.

Judgment debts—SOR ¶¶ 1.a-1.c

From November 2011 through August 2012, Applicant rented an apartment while on a TDY assignment for his employer. He advised the leasing agent (SOR ¶ 1.c, same debt in 1.h) that he would be leasing the apartment for 11 months, but he signed a 12-month lease. When his TDY ended, Applicant returned to his current locale. He believed that the creditor in SOR ¶ 1.h retained his security deposit of \$1,350 to cover the rest of his rental term and that he did not owe any balance after he moved. In September 2012, a \$1,250 judgment was filed against Applicant for unpaid rent. As of September 2014, the leasing agent was reporting a \$2,050 balance in collection. (GEs 3-5; Tr. 39-42, 60-63.) Applicant disputed the judgment with Trans Union, and it was deleted from his credit record. (AEs A-B.)

In September 2012, an ex-girlfriend obtained a \$1,230 judgment against Applicant (SOR ¶ 1.b). (GEs 3-5.) She claimed that he borrowed money from her, which he denies. He does not dispute that a "revenge judgment" was awarded against him, however. (Tr. 38, 58-59.) Applicant

disputed the debt with the credit reporting agencies, and as of May 2017, the judgment was no longer on Applicant's credit record. (GE 6; AE D.) He believes that since the credit reporting agencies could not verify the debt, it was not legitimate, and he does not have to pay it. He has not contacted the court that issued the judgment. (Tr. 59-60.)

A \$605 judgment was filed against Applicant in July 2014 (SOR ¶ 1.a). (GEs 5-6.) Applicant explained that he bailed out a friend from jail. He assumed that his friend would pay the debt. He understood at the time that he was guaranteeing payment. (Tr. 37-38, 56-58.) As of May 2017, the judgment was still on his credit record. (GE 6.) As of June 23, 2017, Equifax was conversely reporting no public records on his credit report. (AE D.) TransUnion had also deleted the judgment from his credit record. (AE B.) Applicant provided no documentation showing that it has been paid, however.

Utility, Cable, and Telephone debts—SOR ¶¶ 1.d, 1.f-1.g, 1.r, 1.z-1.aa, 1.dd

In November 2008, a \$388 cable services debt was placed for collection (SOR ¶ 1.d). Applicant claims he was an authorized user (Tr. 64), but as of March 2016, the debt was still on his credit record as past due. (GEs 3-5.)

An electric utility account (SOR ¶ 1.f) opened in November 2011 became delinquent. He has variously claimed that his then cohabitant girlfriend did not pay the bill while Applicant was on TDY for his employer, but also that he failed to understand that he would continue to incur electricity charges after the company indicated it would not disconnect his electricity service because he had an infant in his home. He asserts that he saw no bill until some two years later, when he was billed for \$6,753, because he was on the road for much of the time. In January 2013, the creditor placed a \$6,753 debt for collection. As of May 2017, the debt was on his credit record as past due for \$6,753. Applicant contacted the creditor after he received the SOR, but he made no payments on the debt. (GEs 3-6; Tr. 67-70.) He understands that he has to take care of the debt. (Tr. 70.)

Another power company (SOR ¶ 1.g), with whom Applicant opened an account on TDY, assigned a \$447 debt for collection in November 2013. Applicant did not contact the power company when he was moving to ask that his account be closed, and apparently the account stayed in his name for a few months. He assumed the landlord had the responsibility of contacting the utility provider. As of January 2015, the debt was on his credit record as past due. (GEs 3-6; Tr. 68-72.) It has been removed from his credit report, but Applicant has made no payments. (Tr. 71.)

In September 2009, a cable services provider charged off a \$995 debt from December 2007 (SOR ¶ 1.r). After Applicant received the SOR, he contacted the cable company and was told that he failed to return a cable box. Applicant testified that the cable box was returned by someone else and that he was not credited for the return. (GE 3; Tr. 86-88.)

A wireless telephone account that Applicant opened in his name for his mother was assigned for collection for \$1,010 in September 2009 after no activity since July 2007 (SOR ¶ 1.z). The bill was going to Applicant's mother, and she apparently terminated the contract prematurely leaving Applicant responsible for the debt. (GE 3; Tr. 94-95.)

A \$397 wireless telephone debt from November 2006 was placed for collection in March 2011 with the collection entity in SOR ¶ 1.aa. The debt was on Applicant's credit record as of May 2013. Applicant disputes the debt but admits that he had an account with the wireless phone company in the past. (GE 3; Tr. 45.)

A \$154 utility debt from March 2007 was placed for collection in December 2012 (SOR ¶ 1.dd). (GE 3.) Applicant claims that he paid the debt in person (Tr. 100), but he presented no proof of payment.

Medical collection debts—SOR ¶¶ 1.i-1.k, 1.u-1.v, 1.cc

A \$159 medical debt from June 2007 was assigned for collection in February 2009 (SOR ¶ 1.cc). In November 2008, a \$112 medical debt from April 2008 was referred for collection (SOR ¶ 1.v). Two dental debts, of \$278 from October 2011 (SOR ¶ 1.k) and \$121 from December 2011 (SOR ¶ 1.u) were assigned for collection in late spring 2012. A \$1,031 debt from December 2011 (SOR ¶ 1.a) was placed for collection in October 2012. A \$170 medical debt from January 2012 (SOR ¶ 1.j) was referred for collection in July 2012. (GE 3.) Applicant maintained that insurance was supposed to cover the largest medical debt (SOR ¶ 1.i). (Tr. 73). He apparently paid the dental debts in SOR ¶¶ 1.u and 1.v and the \$159 medical debt in SOR ¶ 1.cc. (Tr. 91-92, 100.) The \$170 medical debt has been removed from his credit record. (AE A.)

As of June 30, 2014, the medical collection debts in SOR ¶¶ 1.i-1.k and 1.u-1.v were still on his credit record. (GE 4.) As of March 2016, Applicant's credit report showed three medical debts in collection for \$1,031, \$170, and \$231 (SOR ¶ 1.k). (GE 5.) The \$1,031 medical debt had dropped off his credit report as of May 2017, but Applicant has made no payments toward the debt. (Tr. 73-74.) A new medical debt of \$162 from December 2015 was in collection as of May 2017. (GE 6.)

Home Furnishing debts—SOR ¶ 1.m (duplicated in SOR ¶ 1.x), ¶ 1.n (duplicated in SOR ¶ 1.t), 1.w

In October 2011, Applicant leased a washer and dryer and a television (SOR ¶¶ 1.t, 1.x) from a furniture rental and sales company. In January 2013, his accounts were charged off for \$381 and \$1,155. (GEs 2-3.) In August 2014, the debts were acquired by the creditor in SOR ¶¶ 1.m and 1.n. As of March 2016, the debts were in collection for \$1,882 and \$280. (GE 5; Tr. 79-81.) Applicant disputed the debts with the credit reporting agencies, and the listing by the original creditor has been deleted from his credit record. (AE A; Tr. 81.)

In November 2011, Applicant rented furniture under a lease-to-own contract for \$5,111 (SOR ¶ 1.w). Applicant asserts that the furniture was damaged, and the company would not take it back, so he stopped making his lease payments of \$200 per month after August 2012. In February 2013, the creditor charged off his account for \$3,705. (GE 3; Tr. 45, 79, 90.) He claims the debt has been paid. (Tr. 92.)

Student loans—SOR ¶¶ 1.e, 1.o-1.p

In July 2008, Applicant obtained a loan (SOR ¶ 1.e) to pay for an online class. In January 2013, the school assigned a \$1,138 debt for collection. As of December 2015, a \$1,043 balance was past due and in collection. (GEs 3-5.) Applicant asserts he paid down the debt after he received the SOR, using his aunt's credit card, but also that he stopped making payments because of other bills. (Tr. 65-67.) He presented no proof of payments, although the debt was no longer on his credit record as of May 2017. (GE 6.)

In March 2010, Applicant obtained two Direct federal student loans of \$4,000 (SOR ¶ 1.o) and \$2,334 (SOR ¶ 1.p). The loans were to be repaid at \$73 and \$26 per month. As of September 2011, he was in default for \$9,696. As of February 2012, the loans were in collection for \$4,196 and \$2,334. (GEs 3-6.) The loans were fully satisfied after collection with a last payment of April 2013

through interception of a \$6,000 tax refund and wage garnishment while he was on TDY. (Tr. 37, 82.)

Automobile loans—SOR ¶¶ 1.i, 1.q

In March 2007, Applicant obtained a truck loan of \$13,613 that was to be repaid at \$429 per month (SOR ¶ 1.q). In February 2013, his loan was charged off for \$1,112 due to no payments since June 2011. The creditor reported a \$1,876 past-due balance as of May 2014. (GEs 3-4.) Applicant stopped paying on the vehicle after an accident in which he claims the vehicle was totaled. Applicant testified without corroboration that he was told he owes nothing on the loan. (Tr. 84-86.)

In June 2011, Applicant obtained an automobile loan of \$17,915 that was to be repaid at \$421 per month for 73 months (SOR ¶ 1.i). As of April 2013, his loan was rated as current, although he had a history of late payments, including 90 days in October 2012. A couple of times, Applicant paid \$2,000-\$3,000 to redeem the vehicle after it had been repossessed. (Tr. 75-77.) Applicant made no payments on the loan after November 2015, and in January 2013, his loan was charged off for \$13,559. The vehicle was repossessed and sold, leaving him with a deficiency balance of \$12,130 as of April 2017. (GEs 3-6; Tr. 35-36.) Applicant has made no payments on the debt. (Tr. 43, 79.)

Other delinquencies—SOR ¶¶ 1.s, 1.y, 1.bb

Applicant entered into an installment sales contract in March 2008 that required monthly payments of \$73 for 12 months. In December 2008, his account was charged off for \$883 (SOR ¶ 1.s). The debt, which was on his credit record as of June 2014, had been dropped by March 2016. (GEs 3-5.) Applicant investigated the debt after he received the SOR and discovered that the company is out of business. (Tr. 88-89.)

In June 2009, Applicant obtained a loan that was placed for collection in January 2010 for \$721 (SOR ¶ 1.y). (GE 3.) Applicant has been unable to identify the original creditor, and the debt does not appear on his recent credit reports. (GEs 4-6; Tr. 93.)

In September 2012, an insurance company placed a \$361 balance for collection (SOR ¶ 1.bb). (GE 3.) Applicant contracted for the insurance coverage but then cancelled. He was billed for one month, which he refuses to pay. (Tr. 99.)

On June 25, 2013, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM) about his past-due debts, all but one not disclosed on his SF 86. When asked to confirm whether he was past due on any federal debt, Applicant explained that he had been notified by the IRS that he owed \$1,311 in past-due federal income taxes, which he speculated might have been incurred when he was on worker's compensation for three months. He also admitted that he had defaulted on his truck loan following an accident in July 2011 (SOR ¶ 1.q), but he claimed that he had been told by a person who had come to repossess the truck that he would not be pursued for the \$1,000 that he owed on the loan. Applicant also contradicted his negative response on the SF 86 about whether he had defaulted on any loan. He explained that his income tax refund of \$6,000 for tax year 2012 had been taken to pay off his federal student loans. About the delinquent power bill listed on his SF 86, Applicant indicated that he would pay the debt (SOR ¶ 1.g) in the near future. When asked whether any accounts had been referred for collection in the last seven years, Applicant responded "Yes," but he was unable or unwilling to provide any details. He claimed not to recognize the three judgments or several of the other delinquent accounts on his record. He recognized the furniture debt in SOR ¶ 1.w and the debt in SOR ¶ 1.x, which were for a washer and dryer, and indicated that he would make repayment arrangements. He also recognized the insurance debt in SOR ¶ 1.bb. He claimed that he had been told his monthly payments would be \$100 but that he was billed for \$388. He cancelled the coverage and received

no further correspondence about the debt. He expressed an intention to pay any balance on the debt in the near future. Applicant explained that his financial issues started around 2009 when his daughter was born three months prematurely, and he took unpaid leave during that time. His then fiancée (now spouse) did not work, which caused some financial strain. Moreover, he lost track of his bills due to several TDY assignments. Applicant was on TDY for his employer for about ten months from 2005 to 2006, for six months in 2008, for nine months in 2010, from November 2011 to August 2012, and from January 2013 to mid-May 2013. Applicant expected his financial situation to improve because his fiancée had recently gained employment. (GE 2.)

After his interview, Applicant obtained his credit report and began to investigate some of the adverse credit information starting with the judgments. (Tr. 62-63, 94.) For some debts, he made no effort to contact the creditors before the SOR was issued. As of his hearing in late May 2017, he had made few payments. He was unable to verify some of the debts, although he also testified that he did not ask creditors to check for debts that may have been due some time ago. If the creditor said he did not owe a debt, it was “good enough for [him].” (Tr. 97-99.) He testified that he took care of some minor debts of \$50 or so, but he did not have the financial means to pay all his debts. (Tr. 105.)

Applicant obtained loans or hardship withdrawals from his retirement account at work several times to pay his rent. Allowed only two loans from his account at one time, he took a second loan in 2016, in the amount of \$8,000, to help his spouse purchase their home. They were paying \$1,200 per month in rent, and his spouse’s mortgage payment is \$1,031 per month. (Tr. 106, 117-118.)

Applicant was out of work for about 11 months after a work-related injury sometime before 2009. He went three months without any income before his payments began. After the birth of his daughter in January 2009, Applicant took leave without pay for three months. More recently, he was out of work on disability from February 2017 to approximately mid-May 2017. His disability pay was approximately \$300 a week. (Tr. 52-53.) In May 2017, he paid almost \$1,400 to catch up on his spouse’s mortgage loan. Their income tax refund for 2016 went toward the mortgage. (Tr. 112, 116.) After the car financed by the loan in SOR ¶ 1.I was repossessed, Applicant entered into an automobile lease for \$11,743 in October 2016, to be repaid at \$403 per month. (GE 6.) He totaled that vehicle in an accident and obtained a lease for another vehicle in May 2017. (Tr. 114.) His current monthly car payment is \$90 a week. (Tr. 107.)

For the most part, Applicant and his spouse live from paycheck to paycheck. When bills are past due, Applicant pays for whichever service is closest to being terminated. (Tr. 115.) Applicant’s take home income is \$650-\$700 per week. (Tr. 105.) His spouse, who works as a housekeeping supervisor at \$13 an hour, brings home \$300 a week. (Tr. 55, 106.) He reported monthly bills of \$1,031 for his spouse’s mortgage, \$80 for cable and Internet services, \$92 for their cell phones, \$360 for his car, \$400 for his spouse’s car, \$247 for his car insurance and a similar amount for her car insurance, gasoline at \$280, \$150 for electricity, \$50 for sewage, \$33 for water, \$80 for rubbish removal, and the rest for food. (Tr. 106-109.) Applicant does not currently have any open credit card accounts. (Tr. 111.) A credit card account opened in October 2015 was charged off for \$838 around June 2016. As of May 2017, the debt was unpaid. (GE 6.)

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(a), 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 national security eligibility will be resolved in favor of the 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 EO 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 articulated in AG ¶ 18:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

An applicant is not required to be debt free, but is required to manage his finances in a way as to exhibit sound judgment and responsibility. The evidence establishes that Applicant defaulted on three educational loans, several utility and cable service debts, some lease agreements for home furnishings, several medical debts, and two car loans. A former landlord obtained a judgment against him for unpaid rent after he vacated an apartment before his lease term ended. He guaranteed payment of bail for a friend who then defaulted for \$605, and a judgment was filed against him. An ex-girlfriend obtained a default judgment of \$1,230 in 2012.

The SOR alleged that Applicant owed \$48,766 in delinquent debt based on the credit information shown on several credit reports. The Appeal Board has held that adverse information from a credit report is normally sufficient to meet the substantial evidence standard to establish a debt. See, e.g., ISCR Case No. 14-03612 (App. Bd. Aug. 25, 2015.) However, some of the debts appear to be duplicate listings (SOR ¶¶ 1.c and 1.h, 1.x and 1.m, and 1.t and 1.n), and his federal student loans were repaid through garnishment before the SOR was issued in May 2016. Available credit information is sufficient to establish more than \$40,000 in past-due debt, and to place the burden on Applicant to disprove legitimacy under AG ¶ 20(e) or to show pre-SOR repayment. 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.

When Applicant answered the SOR, he disputed the validity of the default judgment in SOR ¶ 1.b, claiming that an ex-girlfriend made a false claim out of revenge. He denied some other debts on the basis of payment (SOR ¶¶ 1.w, 1.cc, 1.dd); that he was not credited for returned merchandise (SOR ¶¶ 1.r, 1.t); that his mother had incurred the debt (SOR ¶ 1.z); that he successfully disputed the debt (SOR ¶ 1.bb); or that the creditor had no record of the debt (SOR ¶¶ 1.y, 1.aa). As of his hearing in May 2017, he was disputing additional debts because they had been removed from his credit record, most notably the judgments in SOR ¶¶ 1.a and 1.c, or they had been paid, such as the dental debts in SOR ¶¶ 1.u and 1.v.

The courts are unlikely to have issued financial judgments without sufficient evidence to substantiate the debts. It is also noted that debts may be dropped from a credit record because of factors, such as the passage of time or the failure of a creditor to timely respond to the request of the credit reporting company for information, that do not disprove their validity.² Concerning the \$605 judgment from July 2014 and the \$1,250 judgment from September 2012 owed a previous landlord, Applicant admits that he guaranteed bail for a friend and that he did not pay the last month's rent for an apartment leased on TDY. As for the \$447 power bill (SOR ¶ 1.g), Applicant bears some responsibility in that he failed to notify the utility company that he was moving. He does not deny that he had a vehicle loan with the lender in SOR ¶ 1.q or that he stopped his payments after he totaled the truck. Concerning the wireless phone debt in SOR ¶ 1.z, Applicant testified that he opened the account in his name for his mother. He was responsible should his mother not make the payments. Some creditors may no longer be collecting debts, but that does not mean that Applicant resolved the debt in good faith.

² See ISCR Case No. 14-05803 at 3 (App. Bd. July 7, 2016) (citing ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015)). Under 15 U.S.C. § 1681c, the Fair Credit Reporting Act requires removal of most negative financial items from a credit report seven years from the first date of delinquency or the debt becoming collection barred because of a state statute of limitations, whichever is longer.

Concerning the debts that reportedly could not be verified by the creditors (SOR ¶¶ 1.y, 1.aa), they were no longer on Applicant's credit record as of June 2014. Regarding the \$159 medical debt in SOR ¶ 1.cc and the dental debts in SOR ¶¶ 1.u and 1.v, Applicant testified credibly that he paid those debts after he received the SOR. He testified that he had to repay the \$154 utility debt in SOR ¶ 1.dd so that he could reopen an account with the utility company. His claim of debt satisfaction for the \$3,705 furniture debt in SOR ¶ 1.w is more difficult to accept without corroborating documentation, given his admission during his interview with the OPM investigator that he had stopped paying for the furniture because it was damaged.

Applicant does not dispute his liability for several sizeable delinquencies, including the educational loan in SOR ¶ 1.e (\$1,043), the electric power debt in SOR ¶ 1.f (\$6,753), the defaulted car loan in SOR ¶ 1.l (balance \$12,130 as of May 2017), or the medical debts in collection, including the \$1,031 debt in SOR ¶ 1.i. Disqualifying conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts," AG ¶ 19(b), "unwillingness to satisfy debts regardless of the ability to do so," and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Under the AG effective for any adjudication on or after June 8, 2017, a record of consumer delinquency may be mitigated under one or more of the following conditions in ¶ 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;
- (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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(a) has minimal applicability, notwithstanding that several of the debts were incurred more than five years ago. The car loan in SOR ¶ 1.l is a newer delinquency, and most of his past-due debts have not been addressed.

AG ¶ 20(b) is partially established to the extent that Applicant's delinquencies, or lack of progress to resolve them, can reasonably be attributed to lost income. Applicant testified that he was out of work for 11 months and completely without income for three of those months following a work-related injury that occurred before 2009. The wireless phone debt in SOR ¶ 1.aa is from November 2006. The utility debt in SOR ¶ 1.dd is from March 2007. The medical debt in SOR ¶ 1.cc is from June 2007. Applicant, albeit voluntarily but with legitimate reason, was on leave without pay after his daughter's premature birth in January 2009, which compromised his finances a second time. However, most of the debts in the SOR were incurred either when Applicant was working full time, well before he went on medical disability leave in February 2017. Furthermore, Applicant did not show sound financial judgment in several aspects. He leased furniture in November 2011 under a contract-to-own. He claims that he stopped making payments because the furniture was damaged,

but available credit information shows that he made payments to August 2012. The \$6,753 electric utility debt was assigned for collection in March 2014 after first becoming delinquent in November 2011. Applicant claims he failed to understand that he would continue to incur electricity charges after the company indicated it would not disconnect his electricity service because he had an infant in his home. He asserts that he saw no bill until some two years later, when he was billed for \$6,753, because he was on the road for much of the time. He was reportedly on TDY from November 2011 to August 2012. Even so, he had an obligation to ensure that debts were being repaid, and it is difficult to believe he would be so naïve as to assume that he did not be charged for electricity for some two years. One also has to question his judgment in accepting a creditor's assertion that it has no present record of a debt for him without asking the creditor to check its historical records. Such behavior raises considerable doubts about his willingness to pay debts incurred in the past that may have dropped off his credit report or been transferred to a new collection entity.

The deletion of debts from Applicant's credit report without evidence showing that the debts did not belong to Applicant does not satisfy AG ¶ 20(c) or AG ¶ 20(d). The resolution of his federal student loans through involuntary garnishment is not enough to fully implicate AG ¶ 20(c), given that several other delinquencies remain unaddressed, and he has had no financial counseling of the type specified under AG ¶ 20(c). While he may have paid down the loan in SOR ¶ 1.e and fully satisfied the debts in SOR ¶¶ 1.u-1.v and 1.cc-1.dd, Applicant has not made enough progress toward resolving his debts to fully mitigate the financial considerations security concerns.

Whole-Person Concept

In the whole-person evaluation, 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(d).³ Some of the factors in AG ¶ 2(d) were addressed under Guideline F, but some warrant additional comment.

The security clearance adjudication is not aimed at collecting an applicant's personal debts. Rather, it involves an evaluation of an applicant's judgment, reliability, and trustworthiness in light of the security guidelines in the Directive. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). In evaluating Guideline F cases under the whole-person concept, the Appeal Board has established that an applicant is not required to pay off every debt in the SOR:

The Board has previously noted that the concept of a meaningful track record necessarily includes evidence of actual debt reduction through payment of debts. 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. All that is required is that an applicant demonstrate that he has established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and evaluating the extent to which

³ The factors under AG ¶ 2(d) 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.

that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic.

See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted). Applicant has no plan in place to resolve even those past-due debts that he does not dispute. He has yet to show that he can be counted on to handle his finances responsibly when he incurred new delinquencies in the last two years. A credit card account opened in October 2015 was charged off for \$838 around June 2016. A \$162 medical debt from December 2015 was assigned for collection in June 2016. As of May 2017, both of those debts were still outstanding. It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong argument against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). Applicant's promotion to an inspector position at work has brought an increase in salary, but it is not yet clear that he will be able to make sufficient progress toward regaining financial stability to dispel the security concerns. For the reasons noted above, I conclude that it is not 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
Subparagraphs 1.a-1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i-1.n:	Against Applicant
Subparagraphs 1.o-1.p:	For Applicant
Subparagraphs 1.q-1.s:	Against Applicant
Subparagraphs 1.t-1.v:	For Applicant
Subparagraph 1.w:	Against Applicant
Subparagraphs 1.x-1.y:	For Applicant
Subparagraph 1.z:	Against Applicant
Subparagraph 1.aa:	For Applicant
Subparagraph 1.bb:	Against Applicant
Subparagraphs 1.cc-1.dd:	For Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Elizabeth M. Matchinski
Administrative Judge