DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
Redacted	)	ISCR Case No. 15-03987
	)	
Applicant for Security Clearance	)	

Appearances

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

02/21/2017

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Decision

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MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant defaulted on his student loans and on a wireless phone debt in part because of a lengthy unemployment. He settled the telephone debt in collection after his hearing, but more progress is needed toward addressing his student loans. Clearance is denied.

Statement of the Case

On December 4, 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 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.

On December 21, 2015, Applicant answered the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On April 22, 2016, the case was assigned to a DOHA administrative judge to conduct a hearing to determine whether it is clearly consistent with the national interest to grant a security clearance for Applicant. On May 23, 2016, the case was transferred to me because of my jurisdictional responsibilities. On May 31, 2016, I scheduled a hearing for July 13, 2016.

I convened the hearing as scheduled. Six Government exhibits (GEs 1-6) were admitted into evidence without objection, and Applicant testified, as reflected in a transcript (Tr.) received on July 21, 2016. I held the record open for six weeks after the hearing for Applicant to supplement the record. On September 14, 2016, Applicant submitted nine exhibits (AEs A-I) through Department Counsel, who expressed no objection to their admissibility on October 3, 2016. I admitted the exhibits and closed the record on October 3, 2016.

Findings of Fact

The SOR alleges that, as of December 4, 2015, Applicant owed $16,767 in delinquent student loan debt (SOR ¶ 1.a) and a $515 cell phone debt in collection (SOR ¶ 1.b). Applicant admitted the debts when he responded to the SOR. He indicated that he would bring his student loan account into good standing and that he would pay the cell phone debt before his hearing. After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 49-year-old painter with an associate degree from a community college and some credits toward a bachelor's degree. Applicant was married from September 2005 to March 2008. In March 2010, Applicant had a son by another relationship. Applicant was granted custody of his son in approximately November 2011, and he has raised his son on his own since then. (GEs 1, 5, 6; Tr. 20, 24-25.)

Applicant took classes at a local community college sporadically over the years, eventually earning his associate degree in 1999. He paid cash for his community college studies. (Tr. 49-51.) Approximately 20 years ago, he also took a course at a computer processing institute for eight months that he paid for with student loans. (AE I; Tr. 47-50.) The school closed down, which led him to believe that it may have been a predatory, for-profit institution. (Tr. 49.)

Applicant worked as a bartender from June 2002 to November 2003. From November 2003 to July 2004, Applicant was employed as a laborer for a window installation company. He resigned from the job when his employer failed to take action to address comments by a supervisor that made him uncomfortable. Applicant returned to bartending in July 2004, and he held that job until November 2011, when he resigned to care for his son. (Tr. 19-23.)

Except for some part-time income from October 2012 to February 2013 as an assistant coach for a high school team (GE 5), Applicant was unemployed from November 2011 to July 2013 while caring for his young son and fighting for permanent custody. (GE 1; Tr. 19-20.) He received welfare benefits of $450 a month while he was unemployed. He and his son moved from place to place for a couple of months until January 2012, when he began renting a room from a female friend. (GEs 1, 6; Tr. 22-23, 27.)

In November 2012, Applicant accepted a job offer from his current employer, which was contingent on him being granted a DOD secret clearance. (GE 5.) Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86) on November 16, 2012. Applicant listed some criminal offenses that occurred more than ten years ago in response to the police record inquiries. He responded affirmatively to an inquiry into whether there was currently a domestic violence protective order or restraining order against him, and explained that the mother of his son had filed an order of protection against him two days after he filed for custody of their son in September 2011. He added that his son had been with him for almost a year. Applicant responded affirmatively to inquiries concerning any delinquency involving routine accounts. He disclosed that he owed $16,767 in delinquent student loan debt (SOR ¶ 1.a) because he "was irresponsible," but that he would begin repayment as soon as he was employed. He also listed a cell phone debt of $515 (SOR ¶ 1.b) from approximately January 2012, which he also planned to repay once he had a regular paycheck. (GE 1.)

On January 18, 2013, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM) about his arrest record, his custody battle for his son, the protective order against him that was still pending in court, and his disclosed financial delinquencies. Applicant attributed his default on his student loan and cell phone accounts to his unemployed status. He expressed his intent to establish repayment plans once he had employment income. (GE 6.)

The defense contractor position offered to Applicant was filled while his background investigation for security clearance eligibility was still pending. Applicant successfully applied for a different position for the company that did not require security clearance eligibility. He began working in July 2013 on second shift, so he was paid a shift differential. (GE 5; Tr. 19, 29.)

As of September 4, 2013, Applicant's credit report showed only two entries. A joint revolving charge account with a high credit of $258 and timely payments had been closed since September 2007. The only other entry was the cell phone debt of $515 from February 2012, which was placed for collection in March 2013 (SOR ¶ 1.b). (GE 4.)

Applicant was re-interviewed by an OPM investigator on September 10, 2013. He volunteered that he had part-time income from October 2012 to February 2013 as an assistant coach at a high school. He explained that the court had expunged the protective order in approximately May 2013, but that the custody battle over his son was still ongoing. About his defaulted student loan, Applicant indicated that he did not know the details of his delinquency; that the listed $16,767 balance was an estimate; that he probably owed over

$17,000; and that he had yet to make any payments. He indicated that he would likely be in a position to contact the student loan lender in October 2013 and establish a repayment plan. He planned to apply his anticipated income tax refund toward the debt. As for the wireless phone debt in collection, Applicant surmised that the debt had accrued to $600 because of interest. He explained that he could not afford the payments when he was on welfare. He had yet to make any payments toward the debt because he was paying $350 a week for childcare. Applicant expressed intent to fully pay the debts. (GE 5.)

As of January 2014, Applicant's hourly wage was $17.88 ($16.48 plus a $1.40 shift differential). (AE F.) From January 2014 to November 2014, Applicant's wages were garnished a total of approximately $5,000 for his student loan debt. (AEs F, G.) By November 2014, his hourly wage had increased to $19.38 when accounting for his shift differential. For the week ending November 8, 2014, his take-home pay was $679 after deductions. It was the last time that his pay was garnished for his student loans.[1] (AE G; Tr. 31.) In September 2015, Applicant moved to first shift at a wage of $20 an hour. He took home $595 for the week ending September 12, 2015. (AE E.)

In June 2016, Applicant transferred to another position paying $22.12 an hour. (AE C; Tr. 19.) He was repaying two 401(k) loans (AE C) and overtime was less available due to a company "slow down." (Tr. 31, 34-35.) By three weeks into his new job, Applicant had already displayed a commitment to completing his daily assignments. Applicant's foreman considered Applicant to be a "welcome asset" to their team. Applicant had demonstrated a high level of initiative and enthusiasm. (AE H.)

Applicant testified that his student loan lender no longer had any record of his student loans. (Tr. 54-55.) However, he indicated that he had taken action on July 13, 2016, toward repaying his student loan debt, which had accrued to $18,000. (Tr. 31, 34, 46.) He had been contacted by a company about a nine-month rehabilitation program (Tr. 59-60, 63-64), and he authorized debit of his bank account at $25 per week starting on July 15, 2016. He explained that he could repay his student loans at as little as $5 a month. (Tr. 34.) Applicant expressed concern that the company might not be legitimate, although the company was aware of the 2014 garnishment and the amount paid by garnishment. (Tr. 52-56, 60**.)**

Applicant's take-home pay was $530 for the week ending September 3, 2016. (AE C.) In a post-hearing submission, Applicant indicated, "I can pay by setting up a $5 a month payment schedule. I will pay more." (AE I.)

Applicant paid $195 a week for eight weeks of summer camp for his son in 2016. (AE B; Tr. 38.) As of September 2016, Applicant's rent was $800 a month. He was also paying $150 a week for before-school care for his son so that he can get to work on time. (AE A; Tr. 39.) He also has some afterschool costs, but it varies because some friends do

[1] Applicant later testified that "some company" was able to convince his employer that he owed the debt that he never acknowledged. (Tr. 57.) Applicant did not know what company initiated the garnishment or even whether it was in response to a court order. (Tr. 58.)

not charge him. He had additional childcare costs some weekends when he was working overtime. (Tr. 38-39.) His pays $105 per month for car insurance. (Tr. 42-43.)

Applicant receives no child support from his son's mother. Applicant would like to file for child support in his state, but he does not know of his son's mother's whereabouts. He does not have the leave to take time off from work to go to court. (AE C; Tr. 29, 41.)

After his security clearance hearing, Applicant reached a settlement for the cell phone debt. He paid $128 by debit card on September 12, 2016. (AE D.) According to Applicant, the creditor accepted payment to fully satisfy his debt, and that it would be removed from collections. (AE A.)

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.

Applicant obtained student loans to attend a technical institute for computer training approximately 20 years ago. He listed the student loans on his November 2012 SF 86 as having a delinquent balance of $16,676, but he then expressed uncertainty at his hearing about the status of his loans, given the computer training institute had closed down and the loans are not on his credit reports. Pay statements submitted after his hearing show that his wages were garnished in 2014 for his student loans, and he indicated that his student loan debt had accrued to $18,000. Available evidence substantiates a longstanding student loan delinquency. Applicant does not dispute that a $515 wireless phone debt from January 2012 was placed for collection in April 2014. Disqualifying conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Mitigating condition 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," has some applicability in that the initial defaults were not recent. However, AG ¶ 20(a) does not mitigate such longstanding delinquency.

Applicant is the sole source of information about his student loans, and he provided little detail about their delinquency history. Applicant told an OPM investigator that he had made payments on his student loans when he was employed, but his lengthy unemployment led him to default. Except for some minimal income earned as an assistant coach from October 2012 to February 2013, Applicant was unemployed from November 2011 to July 2013 while caring for his then toddler-age son. 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 separation), and the individual acted responsibly under the circumstances." Applicant cannot reasonably be expected to have made payments toward his old student loans when he was struggling to support himself and his young son on a welfare benefit of $450 a week. More recently, his income has declined somewhat because of a lack of overtime work.

Even if Applicant's financial problems arose in whole or in part to circumstances outside of his control or were not the result of financially irresponsible behavior, I still have to consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties. *See e.g.*, ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan 12, 2007). Applicant has known about the delinquencies for some time. He disclosed them on his November 2012 SF 86 and indicated during a September 2013 interview that he planned to make repayment arrangements in approximately October 2013. Childcare costs continued to be a burden, and in 2014, his wages were garnished for his past-due student loans. It is unclear why his employer ceased the garnishment, but it then became incumbent on Applicant to stay in contact with his student loan lender and attempt to negotiate repayment. There is no evidence that he made any effort until just before his hearing, when he responded to an inquiry about a student loan rehabilitation program. He had taken no steps to address the $515 cell phone collection debt as of his hearing in July 2016. He did not offer a credible explanation for why he could not reach out to the cell phone provider and offer small payments in 2015.

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," has limited applicability. Applicant's payment of $128 in September 2016 has apparently settled the cell phone debt in SOR ¶ 1.b. Inasmuch as he waited until after his July 2016 hearing to address the debt, it is difficult to give full mitigating weight to AG ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Even so, Applicant deserves credit for his payment.

The primary concern in this case is Applicant's student loan delinquency because of its mounting balance to its current $18,000 and relatively recent attempts to collect the student loans, including by garnishing his wages in 2014 and the proposed rehabilitation program in 2016. They suggest that Applicant is likely to be pursued for the loan balance. Applicant expressed a willingness to make payments. The day of his security clearance hearing, he contacted a company that had offered him a loan rehabilitation program, and he claimed he authorized debit from his account at $25 a week. He knew little about the firm and expressed concerns at his hearing about its legitimacy. He presented no evidence that he followed through with the loan rehabilitation. His offer of September 2016 that he can pay by setting up a payment schedule of $5 a month shows that he had yet to establish a payment plan. The Appeal Board has held that an 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. However, an applicant needs to show that he has a plan to resolve his debts and that he has taken significant steps to implement his plan. *See* ISCR 07-06482 (App. Bd. May 21, 2008). Applicant's promise to pay his student loans is not a substitute for a track record of timely payments. *See* ISCR Case No. 07-13041 at 4 (App. Bd. Sept.

19, 2008) (citing ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999)). Neither AG ¶ 20(c) nor AG ¶ 20(d) apply to his student loan delinquency. The financial considerations concerns are not adequately mitigated.

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).[2] 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.

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 candidly disclosed his delinquencies on his SF 86. He coped reasonably well with a contentious custody battle over his son, and with the help of some friends, he survived a lengthy unemployment without relying on credit cards. He incurred the cell phone delinquency during that time, but there is no evidence of other new past-due accounts.

Applicant's financial situation continues to be impacted by costs of before and after-school care for his son. He has demonstrated reliability in his new position at work. However, he displayed questionable financial judgment by not keeping himself informed about his student loans. He could not identify who had sought the garnishment of his wages in 2014 and did not know who was holding his student loans as of his hearing. As of September 2016, he was not disputing that he owes approximately $18,000 ($7,000 each on two loans and $3,600 in fees). He has no record of sustained payments toward the student loans from which I could reasonably conclude that they are likely to be resolved at some future date. Applicant has not yet allayed the financial judgment concerns raised by his handling of his student loans. It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). For the reasons noted above, I am unable to find that it is clearly consistent with the national interest to grant Applicant security clearance eligibility at this time.

[2] 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.

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:	Against Applicant
Subparagraph 1.b:	For 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