



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
| Redacted                         | ) | ISCR Case No. 15-04285 |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: Eric H. Borgstrom, Esq., Department Counsel  
For Applicant: Thomas Albin, Esq. and Matthew Gunter, Esq.

03/16/2017

**Decision**

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant lost his home to foreclosure in December 2015 after he and his spouse became seriously delinquent on their mortgage loan. It is unclear whether he owes a deficiency balance on the loan, and a credit card charged off for \$5,918 was recently settled. Yet, the poor financial judgment he exhibited in handling his debts continues to cast doubt on his judgment and reliability. Clearance is denied.

**Statement of the Case**

On November 24, 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 (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 15, 2015, Applicant answered the SOR allegations and requested a decision on the written record without a hearing. On the advice of his counsel, Applicant requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. 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 or continue a security clearance for Applicant. Counsel for Applicant formally entered his appearance on May 6, 2016. On May 23, 2016, the case was transferred to me. On May 31, 2016, I scheduled a hearing for July 14, 2016.

I convened the hearing as scheduled. Five Government exhibits (GEs 1-5) and four Applicant exhibits (AEs A-D) were admitted into evidence without objection. A chart prepared by Department Counsel as a supplement to his closing argument was marked as a hearing exhibit (HE 1) for the record. Applicant and two witnesses testified, as reflected in a transcript (Tr.) received on July 22, 2016.

I held the record open for one month after the hearing for Applicant to supplement the record. No documents were received by the August 14, 2016 deadline, and the record closed on that date.

### **Findings of Fact**

The SOR alleges that, as of November 24, 2015, Applicant's mortgage was in foreclosure status with \$74,294 past due on a balance of \$295,417 (SOR ¶ 1.a). Additionally, Applicant allegedly owed \$195 on a timeshare loan (SOR ¶ 1.b) and charged-off credit card debts of \$2,904 (SOR ¶ 1.c) and \$5,918 (SOR ¶ 1.d). In his *pro se* response to the SOR allegations, Applicant admitted that he had made mistakes in handling his mortgage loan. He did not deny the mortgage deficiency, but he explained that he had attempted to restructure his loan. He denied the timeshare debt in that he had fully satisfied the loan in 2003. Applicant indicated that he has proposed a payment plan for the credit card debt in SOR ¶ 1.c. As for the debt in SOR ¶ 1.d, Applicant assumed that it pertained to a loan that he thought had been rolled into his mortgage in foreclosure. He indicated that he sent the creditor a payment to show his willingness to work with the creditor until his balance is paid.

Department Counsel stipulated upfront at Applicant's hearing that Applicant was an authorized user on the account in SOR ¶ 1.c and is not legally liable for repayment. After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 59-year-old high school graduate, who has worked for his current employer since August 1981 with the exception of five months in 1988 when he was on strike. (GE 1; Tr. 71-72.) He has held a security clearance for most of his employment (GE 4) and seeks to retain a DOD secret clearance that was last renewed in approximately August 2004. (GE 1.)

Applicant was married to his first wife from 1984 to 1993 or 1994. He does not recall the date of his divorce. (GE 4.) He and his current spouse, from whom he is now

estranged, married in November 1997. They have a son age 15. (GE 1.) They paid for their son to attend a parochial school from 2005 to 2015. (Tr. 92-93.)

Applicant and his second wife purchased their marital residence in December 1998. (Tr. 66.) Their loan was either refinanced or transferred over the years. In December 2003, Applicant and his spouse obtained a conventional 30-year mortgage of \$215,980 to be repaid at \$1,538 per month. In October 2005, they refinanced with a new lender, obtaining a \$266,525 mortgage with \$1,876 monthly payments. (GE 3.)

Applicant and his spouse own a timeshare at a ski resort, having paid off their timeshare loan in January 2003. (AE B.) Available credit reports (GEs 3, 5) include a \$392 debt (\$159 past due) on a timeshare loan account from July 2011. (GE 5.) Applicant's spouse testified that they own only one timeshare, which they paid off in 2003, and she did not believe they owed any maintenance fees. (Tr. 51-52.) Neither she nor Applicant could shed any light on this disputed debt. (Tr. 87-88.) They have not used the timeshare since approximately 2008. (Tr. 53.)

Applicant's spouse handled the bill payments in their household, and some accounts were not paid according to terms. (Tr. 94.) In August 2009, she stopped paying Applicant's credit card account in SOR ¶ 1.d. In November 2010, another creditor obtained a \$1,440 judgment against Applicant, which was satisfied in November 2011. (GEs 3, 5.) In January 2011, Applicant's spouse stopped paying on her credit card (SOR ¶ 1.c) on which Applicant was an authorized user. Even with these unpaid debts, they took on new debt. In August 2011, Applicant and his spouse obtained an automobile loan of \$20,735, to be repaid at \$425 a month for five years. Their payment was 30 days past due three times between May 2012 and August 2012, but was otherwise current. (GE 3.)

Applicant and his spouse also had a history of being late 120 days or more in paying their mortgage. They relied on overtime earnings from Applicant to meet their expenses, and Applicant had no overtime available at times. They fell behind several months on their payments. Their lender would not accept partial payments. (Tr. 44.) Additionally, several liens for unpaid real estate and sewer taxes were filed against their property between May 2008 and June 2012. (GE 4.) As of February 2012, their home loan was rated as seriously delinquent. Applicant and his spouse modified the loan that spring and brought it current with funds he borrowed from his 401(k).<sup>1</sup> (Tr. 43.)

From June 2012 to approximately December 2012, Applicant was on temporary duty (TDY) for his employer in a distant state. (GE 4.) Overtime work was routine on TDY (Tr. 78), and he volunteered for the TDY assignment for the extra income needed to pay their mortgage and other bills, including credit card debts. (Tr. 83, 102.) Applicant trusted his spouse to pay the mortgage when he was away. She stopped paying the mortgage around July 2012 (GE 3), and while she twice mentioned to him that they were behind on their

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<sup>1</sup> Applicant indicated when he responded to the SOR that they had arranged for a two-year temporary modification with the company that held their mortgage before the summer of 2013, and that under the loan modification their payments were \$1,200 per month. At the end of the two years, they would be expected to pay \$1,875 per month plus the arrearages.

mortgage, he did not realize that they were so seriously behind in their payments. (Tr. 82-83.)

In June 2013, Applicant received documentation that his property was going to foreclosure. (GE 4.) His mortgage loan was transferred around that time, and in August 2013, the company that acquired their loan established their monthly mortgage payment at \$1,575 per month. Applicant asked that the mortgage loan be restructured to lower their monthly payment to \$1,200, and he was told it would take some time to restructure the loan. (Answer.) They made no payments toward the loan, and as of December 2013, their mortgage loan was \$34,846 past due and in foreclosure proceedings (SOR ¶ 1.a). (GE 3.) The company holding the mortgage loan conditioned permanent modification on them paying \$2,200 a month for three months. Applicant and his spouse made only one payment, which likely occurred in September 2014.<sup>2</sup> (GE 5.) Applicant decided that the monthly mortgage obligation was too high, so he and his spouse made no further payments on their loan. (Tr. 45, 61-62, 84.) The funds that should have gone toward their mortgage payments went to paying credit card bills. (Tr. 108.)

Applicant and his spouse separated in February 2014, in part over their financial difficulties (Tr. 101), and she moved out of the home. (Tr. 37-38.) In March 2014, Applicant obtained a new automobile loan of \$21,025, to be repaid at \$424 per month for 72 months. (GE 3.) He paid off that car loan in September 2014 through a new loan for \$20,301. His new monthly car payment was \$415. (GE 2.)

On July 24, 2014, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86) to renew his security clearance eligibility. Applicant responded negatively to all the financial record inquiries, including whether he had any liens placed against his property in the last seven years, whether a judgment had been entered against him in the last seven years, whether he was in default on any loan in the last seven years, and whether he had been over 120 days delinquent on any debts within the last seven years. (GE 1.)

A check of Applicant's credit on August 6, 2014, revealed the November 2010 judgment (as paid in 2011), the mortgage delinquency in SOR ¶ 1.a, the two credit card delinquencies in SOR ¶¶ 1.c and 1.d, and \$159 past-due on a timeshare loan balance of \$392 (SOR ¶ 1.b). (GE 3.)

On December 29, 2014, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). He was confronted about several tax and sewer liens filed against his property between May 2008 and June 2012. Applicant indicated that he did not know about the liens until March 2013, and when notified, he made two payments from his savings of \$3,524 and \$3,466 to satisfy delinquent property and sewer taxes. He added that when he confronted his spouse about them, she claimed to have no knowledge of the liens. Applicant expressed his intent to handle all property taxes in the future. When later asked by the OPM investigator about a sewer lien filed in

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<sup>2</sup> Applicant's spouse recalled the temporary modification as occurring during the winter of 2014/2015. (Tr. 61.) However, Applicant's credit report of March 2016 indicates a last payment in September 2014. (GE 5.)

November 2014, Applicant denied any knowledge of the lien. He added that he had paid some outstanding property taxes in September 2014 and had not been told about other unpaid taxes or sewer bills. About his delinquent mortgage, Applicant indicated that he learned in June 2013 that his mortgage was going to be foreclosed. He claimed that he then confronted his spouse, who admitted she had stopped paying when their monthly payments increased from \$1,500 to an unaffordable \$2,200 per month. Applicant indicated that the legal process to foreclose on his loan had been “cancelled” because the company holding their mortgage agreed to work with them to reduce their monthly payments. He expressed his intention to make no payments on the mortgage until such time as he was given a monthly mortgage payment that they could afford. Applicant indicated that he had not attempted to contact their mortgage company himself because his spouse handled their bills. Applicant denied any knowledge about the judgment resolved in 2011, or the delinquencies on his credit record (SOR ¶¶ 1.b-1.d). He expressed his intention to inquire about them and establish repayment plans. Applicant explained that he had not listed the mortgage delinquency on his SF 86 because the mortgage company was working with his spouse and so he thought he was not in financial trouble on the loan. Applicant claimed that he did not know that he had to list paid tax liens on his SF 86. He attributed his omission of the other delinquencies from his SF 86 to lack of knowledge. There is no indication that Applicant informed the investigator that he and his spouse were having marital difficulties and living apart. (GE 4.)

By April 2015, Applicant's and his spouse's mortgage loan was past due for \$74,294 and in foreclosure proceedings.<sup>3</sup> The \$392 timeshare debt (\$159 past due) and the \$2,904 credit card debt (SOR ¶ 1.c) were reported as still outstanding. The credit card account in SOR ¶ 1.d had been charged off for \$5,918. The car loan obtained in August 2011 had been fully satisfied. (GE 2.)

Applicant continued to reside in the marital home without paying the mortgage until September 2015, when he was served with an eviction notice. (Tr. 63-64, 80.) Applicant moved into his brother's home. (Tr. 80.) On December 23, 2015, Applicant and his spouse lost the house to a foreclosure sale. (Tr. 41.) Applicant's spouse checked property records and learned that it sold “for over \$200,000.” (Tr. 42.) Applicant's spouse inquired into whether they owe a deficiency balance on the loan, but she had received no response by July 2016. (Tr. 42.) Applicant and his spouse testified that they intend to make payments if they owe a deficiency balance. (Tr. 46-47, 87, 97.)

On February 2, 2016, Applicant paid \$1,379 (AE C), which was accepted in full settlement of the debt in SOR ¶ 1.d. (AE D; Tr. 90.) A check of Applicant's credit on March 15, 2016, showed that Applicant was making timely payments on the car loan obtained in September 2014 and on three revolving credit cards opened in December 2013 (balance zero), November 2015 (balance \$5,320), and October 2015 (balance \$140). The mortgage was listed as in foreclosure with a zero balance as of July 31, 2015, with a last payment in September 2014. The debt in SOR ¶ 1.b was still on his credit record with no update since

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<sup>3</sup> Applicant indicated that he did not recognize the creditor identified in SOR ¶ 1.a. (Answer.) His spouse testified that the creditor in SOR ¶ 1.a is the parent company for the entity that Applicant believes acquired their loan in August 2013. (Tr. 43.)

February 2012. (GE 5.) Regarding the debt in SOR ¶ 1.c, Applicant's spouse confirmed Applicant was only an authorized user. Since they are now separated, she does not expect Applicant to share repayment responsibility for the debt, which remains outstanding. (Tr. 56.)

Applicant's earning statements for January 2, 2016 through June 18, 2016, reflect that he has been repaying two 401(k) loans at \$62 and \$129 per week. He obtained the first loan for \$15,000 in 2012 and the second loan for \$10,000-\$12,000 approximately one year later. He has \$260,000 in his 401(k). (AE A; Tr. 114-115, 123.) His hourly wage is \$28.86. (AE A.) His spouse is a paraprofessional with a school district. She assists children with special needs 67.5 hours every two weeks at \$17.80 an hour. (Tr. 47-48.) Applicant's spouse has physical custody of their son. (Tr. 38.) They have informally agreed to custody and child support. (Tr. 60.) Applicant pays his estranged spouse \$200 each week toward their son's care. (Tr. 58, 61, 95.) They have only one joint bill, which is for their car insurance. (Tr. 58.) As of July 2016, Applicant and his spouse were discussing reuniting. (Tr. 85.)

On direct examination, Applicant was asked whether he was being pursued for other debts than those in the SOR. He responded "No." (Tr. 99.) On cross-examination, Applicant testified that he owes federal income taxes of \$12,000 after paying the IRS \$160 a month for more than a year.<sup>4</sup> Applicant just received notice that he owes an additional \$4,000, and he expects his IRS payment to increase to \$200 a month. (Tr. 116-118.) Applicant has budgeted for \$50 in additional payments to the IRS. He pays \$155 for a storage unit and gives his brother about \$200 a month for rent and utilities. (AE A.)

## **Work Reference**

A manager, for whom Applicant worked on and off between 2006 and 2010, testified that he knows of no adverse issues involving Applicant at work. Applicant does excellent work and has a particular expertise of value to their employer. He has no qualms about supporting Applicant's application for continued security clearance eligibility. (Tr. 11-23.)

## **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

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<sup>4</sup> Applicant testified that he owes federal income taxes for "maybe 2014 and '15" and that he has paid \$160 per month for "almost maybe two, three years." (Tr. 116-119.) Either Applicant was mistaken about the tax years, or more likely, the duration of his tax payments. His income tax return for 2014 would not have been due before April 2015, and even then, it is unlikely that he would immediately have an installment plan in place with the IRS. His 2015 tax return would have been due three months before his hearing. Applicant may well owe the \$4,000 for tax year 2015.

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 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 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.

The Appeal Board explained the scope and rationale for the financial considerations security concern as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted).

As of March 2015, Applicant and his spouse's mortgage was \$74,294 past due on a balance of \$295,417 (SOR ¶ 1.a). He owed a charged-off balance of \$5,918 on a credit card (SOR ¶ 1.d). His spouse's credit card account had been charged off for \$2,904 (SOR ¶ 1.c), but as an authorized user on the account, Applicant is not legally liable for repayment. Applicant's credit reports list a \$392 timeshare debt as \$159 past due, which Applicant disputes. The Appeal Board has indicated that adverse information from a credit report can normally meet the substantial evidence standard for the Government's initial burden of establishing delinquent debt. See ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015). Under ¶ E3.1.15 of the Directive, if the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See ISCR Case No. 10-04641 at 4 (App. Bd. Sep. 24, 2013). Applicant presented documentation showing that his and his spouse's joint timeshare loan was satisfied in 2003. Neither Applicant nor his spouse testified to owing maintenance fees or some other debt incurred in 2011 for the timeshare. Whether valid or not, that debt matters little in this case, however. The mortgage and credit card delinquencies in SOR ¶¶ 1.a and 1.d raise significant security concerns under Guideline F. Disqualifying conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations," are established.

Financial delinquency may be mitigated under AG ¶ 20 by one or more of the following conditions:

- (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, or a death, divorce, or separation), and the individual acted responsibly under the circumstances;



(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(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.

The mitigating conditions have minimal applicability. Applicant's financial problems extended beyond the mortgage and credit card debts in the SOR, as evidenced by the property tax and sewer liens, the \$1,440 judgment debt, and his \$12,000 income tax delinquency.<sup>5</sup> His financial difficulties were self-imposed in that they were largely due to poor financial management. While the inconsistency of his overtime was a factor outside of his control that could implicate AG ¶ 20(b), a reliance on overtime to meet expenses suggests that he and his spouse had a problem living within their means. AG ¶ 20(d) has some applicability because of his and his spouse's efforts to bring them mortgage current in 2012, but Applicant had to borrow \$15,000 from his 401(k) to make their mortgage payments. Applicant claimed in December 2014 that he was largely unaware of the seriousness of their mortgage delinquency before he received a notice about foreclosure proceedings in June 2013. Even if true, he exercised poor financial judgment. Despite his spouse's failure to pay the mortgage loan when he was away on TDY, Applicant did little to ensure that the delinquencies on his record were resolved once he learned about them. His spouse testified that they made only one payment of the three required \$2,200 monthly payments under the trial modification in 2014 because Applicant thought the payment was too high. Applicant continued to live in the marital property without paying the mortgage until he was served with an eviction notice in September 2015 related to the foreclosure. He knew as of December 2014, if not before then, that his charged-off credit card debt in SOR ¶ 1.d was of concern to the DOD, and yet he made no effort to settle it until he received the SOR. Since only one payment had been made toward the mortgage in over two years, he should have had the funds to address the debt before February 2016.

AG ¶ 20(c) is partially implicated by Applicant's settlement of the credit card debt in SOR ¶ 1.d. The creditor accepted less than a quarter of the balance to settle his debt. It is unclear whether Applicant and his spouse owe a deficiency balance on the mortgage loan after the foreclosure. Applicant's spouse testified with no corroboration that the house sold for more than \$200,000. As of March 2015, the balance of the mortgage was \$295,417. (GE 2.) As of July 2015, Equifax was reporting a zero balance in foreclosure on the loan,

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<sup>5</sup> 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).

but it was before the sale of the property and could merely be reflecting the fact of the foreclosure. If Applicant and his spouse are not pursued for a balance on the loan, the foreclosure could trigger AG ¶ 20(c) as to resolving the debt, but it would not qualify as a good-faith resolution that could provide some guarantee of financially responsible behavior going forward. The Appeal Board has addressed the concept of good faith in the context of resolving indebtedness:

In order to qualify for application of [the “good-faith” mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant’s debts. The Directive does not define the term “good-faith.” However, the Board has indicated that the concept of good-faith “requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.”

ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001)) (internal citation and footnote omitted). A foreclosure after years of nonpayment does not show the good faith required under AG ¶ 20(d). The financial considerations concerns raised by the defaulted mortgage loan are not adequately mitigated.

Neither AG ¶ 20(c) nor AG ¶ 20(d) apply to the credit card delinquency in SOR ¶ 1.c. Applicant’s spouse testified that she expects to pay the debt without Applicant’s assistance. She had yet to make any payments as of Applicant’s hearing in July 2016. AG ¶ 20(e) is pertinent in that Applicant is not legally liable for repayment, however, and a favorable finding is returned as to that debt.

## **Whole-Person Concept**

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(a).<sup>6</sup> 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 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

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<sup>6</sup> 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.

evidence of record to decide if a nexus exists between established facts and a legitimate security concern. Applicant is a longtime employee of a federal contractor with a good work record. However, concerns persist about his judgment, reliability, and trustworthiness. It is troubling that he noted no financial difficulties on his SF 86. He knew that his mortgage loan was delinquent in June 2013, if not before then. In December 2014, he admitted to an OPM investigator that a civil suit had been brought against him and his spouse to foreclose on their home loan, and that he had no intention of paying the mortgage until he heard from their lender about a payment amount they could afford. He had been dealing with tax and sewer liens on his property. At his hearing, he admitted that he owed a \$12,000 federal income tax delinquency after making payments of \$160 per month for some two years. If he had made two years of payments, then the payment plan would have been established no later than 2014. He did not mention his income tax debt during his December 29, 2014 interview. Either Applicant failed to keep himself reasonably informed about his finances or he withheld information at times from the DOD.

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). At some future date, Applicant may be able to show a track record of financial responsibility sufficient to overcome the security concerns. 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:

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

### **Conclusion**

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

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Elizabeth M. Matchinski  
Administrative Judge