



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



In the matter of:)	
)	
Redacted)	ISCR Case No. 15-04973
)	
Applicant for Security Clearance)	

Appearances

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

03/21/2017

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant owed delinquent debt on several accounts as of October 2014 because of unexpected medical expenses but also poor financial decisions. A credit card debt of \$10,500 was paid through wage garnishment. He has paid a few debts and started repaying a \$1,246 credit card judgment. He intends to continue to make payments toward his remaining delinquencies and no longer uses any credit cards. Clearance is granted.

Statement of the Case

On December 21, 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 January 21, 2016, Applicant answered the SOR allegations and 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. On May 23, 2016, the case was transferred to me. On May 31, 2016, I scheduled a hearing for July 12, 2016.

I convened the hearing as scheduled. Five Government exhibits (GEs 1-5) and six Applicant exhibits (AEs A-F) 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 20, 2016.

I held the record open for 30 days after the hearing for Applicant to supplement the record. On August 9, 2016, Applicant submitted AEs G and H. Department Counsel did not object by the August 23, 2016 deadline, so I admitted AEs G and H into the record.

Findings of Fact

The SOR alleges that Applicant owed past-due debt totaling \$24,306 (SOR ¶¶ 1.a-1.u) as of December 21, 2015. When he responded to the SOR allegations, Applicant indicated that some of the debts were duplicate listings, i.e., SOR ¶ 1.o is the collection entity for SOR ¶ 1.g and SOR ¶ 1.h is the same debt as collection entity for SOR ¶ 1.s. (Answer.) He indicated that he had satisfied the debts in SOR ¶¶ 1.a, 1.i, and 1.k and that he thought the debts in SOR ¶¶ 1.c-1.e and 1.s had also been paid. He either did not recognize or was uncertain of the status of the debts in SOR ¶¶ 1.f, 1.j, 1.l-1.n, 1.p-1.r, and 1.t-1.u, and he would investigate them. He admitted that he had lost track of the debt in SOR ¶ 1.b, and he expressed an intention to repay it.

Before the introduction of any evidence, Department Counsel conceded that the debts in SOR ¶ 1.f and SOR ¶ 1.n had been fully satisfied before the issuance of the SOR; that the debt in SOR ¶ 1.e was duplicated in SOR ¶ 1.i; and that the debt in SOR ¶ 1.g was the same debt as ¶ 1.o. After considering the pleadings, exhibits, and transcript, I find that in addition to those duplicate listings, the debt in SOR ¶ 1.h is the same debt as SOR ¶ 1.s, and SOR ¶ 1.m is the same debt as SOR ¶ 1.q. Additional findings of fact are as follows.

Applicant is a 47-year-old high school graduate with some technical training. He served honorably in the U.S. military from June 1987 to December 1997. (GE 1; Tr. 33.) He was unemployed from August 1998 to May 1999, when he began working as an installer for a technology company. He was laid off in June 2003 and unemployed until he began his current employment with a defense contractor in October 2003. (Tr. 37.) He seeks to retain a secret clearance that he has held since October 2004. (GEs 1, 2; Tr. 30.)

Applicant was married to his first wife from April 1988 to 1995 or 1996. They had a daughter in August 1990. (GEs 2, 5.) Applicant had a daughter in December 1993 with

another woman. (GEs 1, 2.) He paid child support and provided other financial assistance for his daughters, such as paying for braces and college costs. (AEs C, G; Tr. 31-36.) Applicant did not provide details about his child support obligations or the extent of his other financial assistance.

Applicant married his second wife in October 1996, and they had a daughter in May 1997. Applicant was widowed unexpectedly in July 2001. As a single parent raising his youngest daughter on his own, he “often was overwhelmed with life and lost track of the bills.” (AE C; Tr. 30-31, 33.) In September 2002, Applicant and his then five-year-old daughter had to vacate their rented home for nonpayment of rent. Applicant testified that his spouse left him “in a pretty good financial bind.” She had told him that bills were being paid. (Tr. 38-40.) After being unemployed since June 2003, he started working for his present employer in October 2003 earning approximately \$16 an hour. (Tr. 32.)

Applicant was in a cohabitant relationship from May 2007 to January 2015. His then girlfriend was not particularly helpful to him in ensuring that all bills were paid. (GE 1; Tr. 39, 40-41.) In August 2009, a credit card lender obtained a \$6,376 judgment against him. His wages were garnished for the debt until it was fully satisfied in June 2011. (GE 4; Tr. 89-90.)

On October 17, 2014, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86) to renew his security clearance eligibility. (GE 1.) Applicant responded affirmatively to financial record inquiries concerning delinquency involving routine accounts. He reported one debt: a credit card debt of approximately \$10,000 (SOR ¶ 1.a) from 2008 that was being repaid by garnishment of his wages at more than \$200 a week. He indicated that the debt should be completely satisfied within a year. He attributed the delinquency to other debts taking priority. (GE 1.)

A check of Applicant's credit on October 28, 2014, revealed several other accounts currently in collection. With respect to the debt in SOR ¶ 1.a, Applicant had stopped paying on the account in September 2008, and a \$10,500 balance was placed for collection. As of October 2014, the creditor was reporting a zero balance on the account. Other credit card debts from 2008 of \$984 (SOR ¶ 1.b), \$434 (SOR ¶ c), and \$531 (SOR ¶ 1.d) were in collection after they had been charged off. A \$778 credit card delinquency from December 2008 (SOR ¶ 1.e) had been referred for collection with the entity in SOR ¶ 1.i, who was reporting an updated balance of \$970 as of September 2014. A credit card balance of \$572 from July 2008 (SOR ¶ 1.f) had been sold in October 2010 and paid in August 2012. A \$1,477 credit card delinquency from July 2008 (SOR ¶ 1.g) had been referred for collection (SOR ¶ 1.o) in July 2009. As of October 2014, the debt was still outstanding. In July 2011, a cable communications company placed a \$631 balance (SOR ¶ 1.s) for collection with the entity in SOR ¶ 1.h, who reported no progress on the debt. Additionally, Applicant owed \$617 on a credit card account that was reportedly past due for \$295 (SOR ¶ 1.j). In March 2009, a collection entity acquired a \$646 debt that accrued to \$1,080 (SOR ¶ 1.l) by October 2014.¹ A retail charge account (SOR ¶ 1.q) was referred for collection in

¹ Applicant was uncertain whether SOR ¶¶ 1.l and 1.m (same debt as SOR ¶ q) were the same debt. (Tr. 62-63.) After his hearing, he determined that SOR ¶¶ 1.l and 1.m were two different collection accounts, albeit

January 2010. By October 2014, the debt had accrued to \$1,246 (SOR ¶ 1.m). An electric utility debt of \$810 had been placed for collection in March 2013 (SOR ¶ 1.n). A \$263 debt for books from July 2011 was in collection (SOR ¶ 1.p). In September 2014, an insurance company placed a \$435 debt for collection (SOR ¶ 1.r). Applicant reportedly also owed a medical collection debt of \$29 from June 2011 (SOR ¶ 1.k). His car had been repossessed but he redeemed it and paid off his loan in June 2012. (GE 4.)

On December 10, 2014, medical debts of \$217 (SOR ¶ 1.t) and \$452 (SOR ¶ 1.u) from August 2014 were placed for collection. (GE 3.) On December 16, 2014, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). Concerning the credit card delinquency listed on his SF 86, Applicant hoped the debt would be satisfied by December 2015. Applicant indicated that he might have other debt that he did not list because he was not aware of the details. When confronted with the adverse information on his credit report, he admitted the \$6,376 judgment, which was paid, and that he had held credit cards with the lenders in SOR ¶¶ 1.a-1.g. He did not recognize the collection debts in SOR ¶¶ 1.i (same as SOR ¶ 1.e), 1.j, 1.l, 1.m (same as SOR ¶ 1.q), 1.p, and 1.r. He surmised that the \$29 medical debt in SOR ¶ 1.k was likely incurred by his youngest daughter. Applicant was unable to provide details about his debts and expressed his intention to follow up. (GE 5.)

When Applicant and his former cohabitant girlfriend ended their relationship in January 2015, she had the utilities shut off in the apartment. Applicant discovered that he was behind on his account, and he had to pay extra to get the service resumed. He entered into an arrangement with his utility provider and paid \$24 each month toward his arrearage. As of July 2016, he was current. (AE F; Tr. 69-70.)

Regarding the status of his delinquent accounts, Applicant testified that his pay was garnished at \$200-\$250 a week from 2014 until April 4, 2015, which he now believes (but has been unable to confirm) fully satisfied the debt in SOR ¶ 1.a. Applicant recalls the date of last garnishment from reviewing a pay statement, but he did not produce any documentation showing the garnishment. (Tr. 42-43.) The debt is no longer on his credit record, so his March 2016 credit report neither confirms nor denies his claim of debt satisfaction. (GE 3.)

In January 2015, the collection entity in SOR ¶ 1.m (same debt in SOR ¶ 1.q) obtained a \$1,246 judgment against Applicant. (GE 3.) In June 2016, he arranged to repay the judgment, which had accrued to almost \$1,347, at \$25 per month with his first payment due on July 20, 2016. (AE D.) On July 17, 2016, his fiancée made the first payment. (AE H.)

Applicant indicated in his January 21, 2015 response to the SOR that he made a final payment on August 9, 2015, to satisfy the debt in SOR ¶ 1.i (same debt in SOR ¶ 1.e). He expressed no knowledge of the utility debt in SOR ¶ 1.n (Answer), but his March 2016 credit report shows that the \$809 collection debt was satisfied on April 28, 2015. The debt

held by the same collection entity. (AE G.)

in SOR ¶ 1.i is no longer on Applicant's credit record, either under the collection entity or the original lender (SOR ¶ 1.e). (GE 3; AE F.)

Between March 2016 and July 2016, Applicant's fiancée paid \$696 in medical debt for Applicant.² (AEs E, H.) None of the payments went toward the medical collection debts SOR ¶ 1.t or SOR ¶ 1.u, which were incurred in 2014. Applicant was injured in May 2016, and he incurred urgent care and co-payment expenses. (AE H; Tr. 50.)

Applicant paid the \$29 medical debt in SOR ¶ 1.k. (Answer.) He has made no payments toward the debts in SOR ¶¶ 1.b-1.d, 1.g (duplicated in SOR ¶ 1.o), 1.h (duplicated in SOR ¶ 1.s), 1.j, 1.l, 1.p, and 1.r. (Tr. 54-67.) He had focused on addressing his medical debts. He has yet to contact some creditors because he does not want to agree to repayment terms that may prove unaffordable. (Tr. 54.) He expressed his intention to make payment plans eventually for all his debts. (Tr. 56, 84.) As of his hearing in July 2016, Applicant had not considered filing for bankruptcy or resolving his debt through a consolidation plan because he had heard that either avenue would be grounds for revoking his security clearance eligibility. (Tr. 67.)

Applicant borrowed from his 401(k) at work in 2014 and in January 2016. He has been repaying the loans from his pay, but he still owes approximately \$2,000 on the first loan. His second loan was for \$2,000. He intended to use the funds borrowed in 2016 to pay down his debt, but his car would not pass inspection, so he bought a 1998 model-year vehicle for \$2,000 cash. He had to replace the vehicle in June 2016 when his youngest daughter, a student driver, had a "slight mishap." (Tr. 71-73, 86-87.) He purchased his current car for \$1,200 cash obtained from savings and his \$4,000 federal income tax refund. The rest of his income tax refund went toward medical bills and to catch up on utility bills. (Tr. 74.)

As of mid-July 2016, Applicant was still out of work on short-term disability since his injury in late May 2016. He received a total of \$1,400 in disability income for the previous six weeks, which was less than his monthly take-home pay of \$2,600. (AE A; Tr. 50-52.) Applicant used over half of his savings to cover his income shortfall so that bills would be paid. (Tr. 51, 82.)

Applicant is now engaged to a woman with whom he has been cohabiting since May 2015. (Tr. 40.) Applicant's fiancée has been helpful to him in showing him his financial mistakes, such as buying what he or his daughter might want rather than what they needed, or spending more for an item than he had to. He gave as an example spending \$200 on jeans for his daughter when \$30-\$40 jeans would suffice. (AE C; Tr. 68, 75-76.) He prepared a monthly budget with his fiancée's help. On his monthly take-home income of \$2,600 (hourly wage of \$29.87, see AE B), he has about \$150 in discretionary income each month. (AE A; Tr. 48, 68.) Applicant has rented the same apartment for the past nine

² Applicant testified that he and his fiancée have a joint checking account into which his pay is deposited and from which they pay all their bills. (Tr. 46.) The debt payments in evidence are by checks drawn on her account. Applicant's name is not preprinted on any of the checks. She handwrote Applicant's name on some of them. (AEs E, H.)

years. His monthly rent has increased slightly over the years from \$775 to \$875. (Tr. 80-81.) Applicant has ongoing medical expenses for which he has budgeted \$180 per month. (AE A; Tr. 49.) He no longer uses credit cards. (Tr. 69, 84.) He budgeted for a \$25 monthly credit card payment for the debt in SOR ¶ 1.m (duplicated in SOR ¶ 1.q). (AEs A, D.)

Applicant's fiancée works part time earning approximately "a couple hundred" a week. (Tr. 44, 78.) She contributes some money for food, but Applicant covers most of the household expenses. (Tr. 45, 78.) Applicant's youngest daughter lives with them. His daughter was employed part time since November 2015. (Tr. 79.) Applicant pays some of his daughter's medical bills. (Tr. 46.) Applicant's work partner for the past few years indicated that Applicant has a new granddaughter. (AE C.) It is unclear whether Applicant provides financially for his granddaughter.

Applicant indicated after his hearing that he was making progress in all areas of his finances. He had contacted a debt management company through which he would be working to budget better and to address his past-due debts. He promised to make better financial decisions in the future. (AE G.) Applicant presented no documentation of any formal agreement or debt repayment plan with a debt consolidation firm, but he provided copies of cancelled checks showing medical payments and his first payment toward the debt in SOR ¶ 1.m (same debt in SOR ¶ 1.q). (AE H.)

Work and Character References

Applicant's union president has held a security clearance for most of his 48 years with his and Applicant's employer. (Tr. 97.) He knows Applicant to be an "exceptional technician" held in high regard by his co-workers. Despite the unexpected death of his spouse and the duties of being a single parent, Applicant has not lost time and continues to work overtime when needed. (AE B; Tr. 94-95.) Applicant's department recently hired over 18 electricians. Applicant is one of the experienced personnel that will be relied on to ensure that the new hires learn the job. Applicant's union president considers him to be an asset to the company and the union. (Tr. 95-96.) Applicant had a couple of safety violations at work in the last couple of years, but the union president knows of no security violations committed by Applicant. (Tr. 98.) Aware from the SOR that Applicant has had some financial issues, he believes that Applicant understands that he has to take care of his debts. (Tr. 96, 101.)

Applicant's union steward, a working leader in Applicant's department but not on Applicant's crew, testified that Applicant works well with others. Applicant's work ethic is "up there with the best of them." Applicant is reliable and knowledgeable in fulfilling his job duties. Applicant has a good relationship with their military customer and is "a seasoned, experienced technician." He has been familiar with Applicant's work for the past ten years and knows of no security violations committed by Applicant. (Tr. 103-108.) He knows that Applicant has had some financial issues but not the details. (Tr. 108.)

A co-worker of Applicant's for almost 13 years as of July 2016 attested to Applicant being "a very hardworking, honest, and reliable asset" to their employer. Applicant has

earned the respect of his supervisors and co-workers. Currently an operational supervisor, this co-worker does not believe it would not be in the best interest of their company for Applicant's security clearance eligibility to be revoked. Applicant possesses knowledge and a skill-set that would be hard to replace, and Applicant has a good working relationship with their customer. (AE B.)

Applicant's current working leader has found Applicant to be conscientious, punctual, and willing to take any job assigned. As Applicant's steady work partner for a few years, he has counted on Applicant to be cognizant of any job hazards. He noted that "family means everything" to Applicant. (AE B.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant's eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential,

rather than actual, risk of compromise of classified information. Section 7 of 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).

The evidence establishes a record of financial delinquency, although not to the extent alleged, given the duplicate listing of some debts in the SOR. As of October 2012, Applicant’s credit card account in SOR ¶ 1.a was in collection for \$10,500. When he applied to renew his security clearance eligibility two years later, he indicated that the debt was being repaid through wage garnishment. He now believes it was fully satisfied in April 2015. His October 2014 credit report shows that another credit card delinquency, of \$572 from July 2008, had been paid off in August 2012 (SOR ¶ 1.f), but other debts totaling approximately \$9,507 were in collection as of October 2014. Two medical debts of \$271 and \$452 from August 2014 (SOR ¶¶ 1.t and 1.u) were thereafter placed for collection in December 2014. Applicant did not set out to defraud his creditors. Rather, his motivation was to provide for his daughters. Even so, disqualifying conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

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). 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.

Applicant's credit report of March 2016 confirms that he paid off the utility debt in SOR ¶ 1.n on April 28, 2015. Given its minor amount, Applicant's claim of having paid the \$29 medical debt in SOR ¶ 1.k is accepted without corroboration. He asserts that he made a last payment on August 9, 2015, to satisfy the debt in SOR ¶ 1.i (same debt as SOR ¶ 1.e), and that his \$10,500 credit card delinquency in SOR ¶ 1.a was paid off through a final wage garnishment on April 4, 2015. He is unlikely to have misrepresented about a wage garnishment that could be verified through the court or his employer. Although he also testified that he could not confirm conclusively that the wage garnishment was for the debt, he did not have any other debt approaching the amount taken from his wages. Even with four debts satisfied before the SOR was issued, his lack of progress toward the other debts totaling more than \$7,700, makes it difficult to apply AG ¶ 20(a). Debts that became delinquent several years ago are still considered recent if they evidence a continuing course of conduct.

AG ¶ 20(b) is applicable in some aspects. The death of Applicant's second wife was unexpected, and she left him with some past-due debts that he had trusted her to pay. He incurred some unforeseen costs to turn on his electricity service when his former girlfriend and he ended their relationship in January 2015. More recently, non-discretionary medical expenses and his income shortfall while on short-term disability have caused some financial strain. However, Applicant's financial difficulties were also caused in part by his poor financial decisions. In explanation, Applicant testified about purchases based on want

rather than need and overspending. AG ¶ 20(b) also does not mitigate Applicant's financial irresponsibility in losing track of his debts.

AG ¶¶ 20(c) and 20(d) are partially established because of those debts in SOR ¶¶ 1.f and 1.n, for which there is confirmation of payment, and the debts in SOR ¶¶ 1.k, and 1.i (same debt in SOR ¶ 1.e), which Applicant credibly asserts have been satisfied. The garnishment of Applicant's wages to resolve the debt in SOR ¶ 1.a would 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). Payment in response to a garnishment order does not show the same good faith as had Applicant contacted his creditor and attempted to negotiate affordable payments. Similarly, while Applicant now has a payment plan in place for the judgment debt in SOR ¶ 1.m (same debt in SOR ¶ 1.q), one has to question whether he would have made that debt a priority were it not for the court judgment and the DOD's concerns about his financial situation. With the plan only recently established, Applicant has not yet established a track record of payments to fully satisfy either AG ¶ 20(c) or AG ¶ 20(d) with respect to that debt. Neither AG ¶ 20(c) nor AG ¶ 20(d) applies in mitigation of the delinquencies owed to creditors not yet contacted as of July 2016.

AG ¶ 20(e) is implicated with respect to those debts that are duplicate listings in that they do not represent additional indebtedness. Applicant did not owe both the \$778 debt in SOR ¶ 1.e and its updated collection balance of \$970 in SOR ¶ 1.i. Likewise, Applicant did not owe both a cable services provider (SOR ¶ 1.s) and its subsequent assignee (SOR ¶ 1.h). The judgment debt in SOR ¶ 1.m originated with the retail creditor in SOR ¶ 1.q. Applicant does not owe his creditor (SOR ¶ 1.g) and the collection entity (SOR ¶ 1.o) each \$1,477. AG ¶ 20(e) also applies in mitigation of those debts that were delinquent but were paid before the SOR was issued (SOR ¶¶ 1.a, 1.f, 1.i (same as SOR ¶ 1.e), and 1.n) in that they were no longer outstanding debts. However, they were still appropriate for consideration in showing the extent of Applicant's financial difficulties.

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.³

³ The DOHA Appeal Board stated in ISCR Case No. 07-06482, decided on May 21, 2008, in part:

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. Applicant expressed his intention to make payments on his remaining delinquencies, which total approximately \$7,700, assuming repayment through garnishment of the debt in SOR ¶ 1.a and payment of SOR ¶ 1.i (same debt in SOR ¶ 1.e). A promise to pay debts at some future date is not a substitute for a track record of timely payments. See ISCR Case No. 07-13041 at 4 (App. Bd. Sep. 19, 2008) (citing ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999)).

The salient issue is whether Applicant has made enough progress toward addressing his past-due debts for me to conclude with confidence that he can be counted on to continue to address his delinquencies. In that regard, Applicant was placed on notice of the delinquencies on his credit record in December 2014 when he was interviewed by the OPM investigator. Once the garnishment of his wages ended in April 2015, he presumably would have had extra income of approximately \$200 per week at his disposal, but his budget based on his wage without overtime reflects much tighter finances. He had to use some of his income tax refund to catch up on bills in 2016. He showed some good faith by resolving the debts in SOR ¶ 1.i (duplicated in SOR ¶ 1.e) and ¶ 1.n in 2015. In a post-hearing statement, he indicated that he will be working with a debt management company to improve his budgeting and to pay off his old debts. Little mitigating weight can be afforded to a plan in such a premature stage. However, Applicant has made some positive changes in his financial habits, including no longer using credit cards, and relying on savings rather than taking on new debt to pay for expenses. While his fiancée's financial contribution to the household is limited, she has helped him with establishing a budget, and she pays the bills. Applicant has had some unexpected expenses of late that hampered his progress in resolving his old debts, most notably for the car in June 2016 and medical co-payments for treatment related to his May 2016 injury. It was reasonable of Applicant to give priority to his recent medical expenses so that he does not incur additional delinquency. There are reasons in support of his application for continued security clearance eligibility, notwithstanding his history of questionable financial judgment.

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

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).⁴ 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 evidence of record to decide if a nexus exists between established facts and a legitimate security concern. Applicant has a favorable work record with his defense contractor employer. His co-workers familiar with his work performance attested to him being an excellent technician and valuable contributor. He has demonstrated reliability and trustworthiness on the job. Despite Applicant having committed two safety violations in recent years, his working leader indicated that he can count on Applicant to watch for hazards at the jobsite. There is no evidence that Applicant has committed any security infractions.

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). Applicant gave priority to his daughters' needs and desires over his obligations to his creditors. He now understands that he made some poor financial decisions in that regard, and he does not intend to repeat them. He is not continuing to incur credit card debt that could compromise his ability to address his remaining delinquencies. His desire to retain the employment that he needs to support himself, his fiancée, and his daughter makes him likely to continue to make payments toward his debts. For the reasons noted above, I conclude that it is clearly consistent with the national interest to grant Applicant security clearance eligibility.

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: FOR APPLICANT

Subparagraphs 1.a-1.u: For Applicant

⁴ 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.

Conclusion

In light of all of the circumstances, it is clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Elizabeth M. Matchinski
Administrative Judge