



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



In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 16-03123
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Rhett E. Petcher, Esq., Department Counsel  
For Applicant: Robert D. Noonan, Esq.

11/29/2017

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**Decision**

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MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant cashed in 401(k) assets and obtained loans to transfer \$428,000 at the direction of a person he did not know for a promised \$900,000 return not received. He owed about \$100,000 in federal and state tax debt for tax year 2015 because the retirement withdrawals were taxable as income on his returns. A \$38,547 credit card debt was cancelled by a creditor in 2013. Applicant is making payments on his defaulted loans and income tax delinquency, but serious doubts persist about his judgment and reliability. Clearance is denied.

**Statement of the Case**

On December 12, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. The SOR explained why the DOD CAF 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 12, 2017, Applicant, then *pro se*, answered the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On April 13, 2017, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On April 20, 2017, I scheduled a hearing for May 22, 2017.

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

At the hearing, four Government exhibits (GEs 1-4) and 19 Applicant exhibits (AEs A-S) were admitted into evidence without objection. A February 23, 2017 letter forwarding discovery of the Government's exhibits to Applicant was marked as a hearing exhibit (HE 1) for the record but was not admitted as an evidentiary exhibit. Applicant testified, as reflected in a transcript (Tr.) received on June 1, 2017.

I held the record open for two weeks for Applicant to submit additional documentation. On June 6, 2017, Applicant submitted through counsel a copy of his 2012 performance appraisal. Department Counsel filed no objections by the June 19, 2017 deadline for comment, so the performance appraisal was admitted as AE T.

### **Summary of Pleadings**

The SOR alleges under Guideline F (SOR ¶¶ 1.a-1.f) and cross-alleges under Guideline E (SOR ¶ 2.a) that Applicant transferred approximately \$428,000 to individuals, whom he had never met but contacted primarily via Facebook, in an attempt to receive a \$900,000 return, and that his family and his girlfriend are unaware of his monetary loss (SOR ¶ 1.a). Additionally, under Guideline F, Applicant was allegedly \$2,441, \$1,129, and \$263 past due on three loans with respective balances of \$31,117 (SOR ¶ 1.b), \$29,867 (SOR ¶ 1.c), and \$7,798 (SOR ¶ 1.d) that he obtained for the monetary transfers in SOR ¶ 1.a; that he owed delinquent income taxes totaling approximately \$100,000 (SOR ¶ 1.e); and that he had an account that was charged off for \$42,232 (SOR ¶ 1.f). Applicant admitted the allegations when he responded to the SOR, but he also stated that he was

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

making monthly tax payments to the IRS and payments under a consolidated loan repayment program that will settle the debts in three years.

### **Findings of Fact**

After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is 62 years old. He is twice divorced, has five grown daughters, and has been in a cohabitant relationship since November 2013. After ten years of taking college classes, he earned a bachelor's degree in engineering in January 2005. He has worked for his defense contractor employer for 43 years and has held a DOD secret clearance for most of that time. He became a supervisor in 1991. (GEs 1-2; AE P; Tr. 23-24, 61, 73-75.)

Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86) on October 6, 2015, to renew his security clearance eligibility. In response to financial inquiries concerning any delinquency involving routine accounts in the last seven years, Applicant listed four credit card debts totaling \$120,000, including the \$42,000 credit card debt alleged in SOR ¶ 1.f. He indicated that he reached settlements with his creditors and paid off the debts, although concerning the debt in SOR ¶ 1.f, he stated discrepantly that he settled with the creditor and the debt was paid off but also that the debt was forgiven. Applicant responded negatively to an inquiry concerning whether he had failed to file or pay federal, state, or other taxes in the past seven years. (GE 1.)

A check of Applicant's credit on November 10, 2015, confirmed that Applicant had settled for less than their full balances three credit card debts that had been in collection for \$27,900, \$13,400, and \$44,000. However, the account in SOR ¶ 1.f had an outstanding collection balance of \$42,323. (GE 3.)

Applicant was interviewed on December 2, 2015, by an authorized investigator for the Office of Personnel Management (OPM). Applicant admitted that he had become delinquent on the credit card account in SOR ¶ 1.f in January 2013 and that he had owed \$42,000, but also that he settled with the creditor. He paid nothing because the debt had been forgiven. About the other three credit card delinquencies listed on his SF 86, Applicant explained in August 2015 he paid \$9,000, \$12,000 or \$13,000, and \$20,000 in August 2015 in full settlement of balances totaling \$78,000. He described his financial situation as good. (GE 2.)

During Applicant's background investigation, it was discovered that he had made several cash withdrawals totaling \$194,270 from his bank accounts between April 2, 2015, and October 27, 2015. On June 15, 2016, Applicant was re-interviewed by the OPM investigator and asked about those cash transactions. Applicant explained that his now deceased aunt, a lawyer by profession (AE B), had texted him about a government grant program in the fall of 2014. She told him that she had applied for and received \$100,000 in grant money through a Mr. X. (AE D; Tr. 27-28, 76-77.) Applicant respected the opinion of his aunt, even though they had contact primarily only at family functions, and he did no

research of his own before contacting Mr. X via Facebook.<sup>2</sup> (Tr. 79-80.) In return for a \$2,000 application fee, Applicant was promised \$200,000 in federal grant money by Mr. X.<sup>3</sup> Over the course of several months between late 2014 and October 2015, Applicant sent money via wire transfer or by Federal Express to five different individuals at Mr. X's direction. The grant money promised by Mr. X increased over time from \$200,000 to \$450,000 to \$900,000, but so had the fees. (Tr. 30-31.) In November 2015, Mr. X wanted another \$30,000 in fees from Applicant. Applicant began to suspect that he had been scammed because he had repeatedly asked Mr. X for his credentials starting in May or June 2015, and Mr. X refused. Mr. X told him that he was fearful of lawsuits. (Tr. 40-41, 86.) By late 2015, Applicant received no grant money. He informed Mr. X that he would not give him any additional funds until he provided his credentials. (Tr. 89.) When asked by the OPM investigator in June 2016 why he had not disclosed these transactions during his December 2015 interview, Applicant responded that he did not think that it had anything to do with his security clearance eligibility, and he was embarrassed. Applicant acknowledged that he had not reported the scam to law enforcement, and that neither his girlfriend nor his family was aware of his monetary loss. The investigator suggested to Applicant that he report the scam to the FBI. Applicant expressed his intention to file a complaint. (GE 2; Tr. 90.) On June 16, 2016, in a follow-up contact with the OPM investigator, Applicant explained that he had contact with Mr. X by Facebook from June or July 2014 to present, and that Mr. X was still asking him for money. Applicant explained that he had previously sent money to the persons at Mr. X's direction as a service fee for "earned tax-free income." (GE 2.)

On June 17, 2016, the investigator asked Applicant about the credit card debt in SOR ¶ 1.f. Applicant indicated that the creditor forgave the debt because of his financial hardship at the time. Applicant was issued a 1099-C Cancellation of Debt form for tax year 2013 which shows that the creditor discharged credit card debt of \$38,547 on November 29, 2013. (GE 2; AE L.) He incurred the credit charges for costs related to his daughters' weddings. (Tr. 52.) Applicant explains that he fell behind after he forgot to make a payment, and the creditor increased his interest rate from zero to 30%. (Tr. 114.) As of May 2016, the creditor was still reporting the account as delinquent for \$42,323 on Applicant's credit record. (GE 4.)

In response to DOHA interrogatories, Applicant indicated on November 9, 2016, that he had transferred a total of \$428,500 at Mr. X's direction and that he had obtained three loans (SOR ¶¶ 1.b-1.d) for some of the funds transferred. Available credit information shows that Applicant obtained two unsecured loans for \$35,000 each (SOR ¶¶ 1.b and 1.c) in October 2015 and an \$8,500 unsecured loan in January 2016 (SOR ¶ 1.c). As of July 2016, the loan in SOR ¶ 1.b was \$2,441 past due (two payments plus fees) on a balance of \$31,117. The loan in SOR ¶ 1.c was \$1,129 past due (one payment) on a balance of

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<sup>2</sup> Other individuals have complained of being victimized by Mr. X. See AE E.

<sup>3</sup> Applicant could not explain why he believed he would be granted a sum of money from the U.S. government without having to provide a reason for the grant. (Tr. 81-82.) He was seemingly not concerned that the addresses to which he sent the money were not government addresses (Tr. 85) or that Mr. X, who claimed to be a U.S. government agent, sent an email from a United Kingdom email account. (AE F; Tr. 85.)

\$29,867. As of July 2016, the loan in SOR ¶ 1.d was \$263 (one payment) past due on a balance of \$7,798. (GE 4.) Applicant disclosed in November 2016 that Mr. X was asking him for another \$25,000. Applicant claimed that he was “stringing [Mr. X] along to help and see if he can be caught.” Applicant indicated that the loan in SOR ¶ 1.b had been charged off for \$31,725, the loan in SOR ¶ 1.c had a balance of approximately \$31,800, and the loan in SOR ¶ 1.d had been charged off for \$7,931. He explained, and AE G confirms, that in May 2016 he began working with a debt-resolution law firm to settle the three loan accounts. He contracted to pay \$890 a month from July 2016 to October 2020 to settle the past-due loans then totaling \$71,500. (GE 2.) Applicant presented evidence of his \$890 monthly payments from July 2016 through May 2017. (AE J.) He expects the loan in SOR 1.d to be fully satisfied in December 2017. (Tr. 100.)

Applicant withdrew \$350,000 from his 401(k) account that he gave to Mr. X. (Tr. 113.) He was aware that he would incur a tax penalty for premature withdrawal, but he did not realize at the time that it would raise his taxable income from approximately \$163,231 to \$565,607 in 2015. (AE S; Tr. 107.) When he filed his federal and state income tax returns for tax year 2015, he owed approximately \$100,000 in taxes (SOR ¶ 1.e). He retained the services of a law firm to negotiate a tax settlement with his state and the IRS for his \$100,000 in tax liability. (GE 2.) In December 2016, the law firm negotiated installment agreements with the state and the IRS. Applicant began repaying his delinquent state taxes at \$1,100 per month for three years. In January 2017, he began repaying his delinquent federal taxes at \$870 per month. (AE H; Tr. 41, 46-47, 99.) Applicant’s bank statements for March and April 2017 confirm the repayment arrangements. (AEs I, K.) As of May 2017, he estimated his tax liabilities at \$30,000 to \$31,000 to the state and \$61,000 to \$63,000 to the IRS. (Tr. 98.)

As of August 2016, Applicant was making timely payments on a home-equity loan with a \$108,542 balance, on a secured loan balance of \$15,469, and on eight credit card accounts with balances totaling \$24,444. Applicant was contractually liable on a mortgage loan with a balance of \$502,588, which had been delinquent in May 2016. (GE 4.)

Applicant denies any dealings with Mr. X since 2016. (Tr. 39.) He did not file a timely complaint about the scam. He claims that he had tried to enter a complaint online in 2016 but that it was complicated for him so he “put it on the back burner.” He filed a complaint with the FBI the weekend before his security clearance hearing. (Tr. 71, 90.) Applicant testified that he knew that the money he sent was “untraceable” and is not likely to be recoverable. (Tr. 90.) As of late May 2017, Applicant had not informed his girlfriend, his daughters, or any friends about the scam. He does not think that the matter concerns them and does not want to lose their respect. (Tr. 70, 102.)

Applicant travels to the Caribbean about once a year. In October 2006, he, a now former girlfriend, and that girlfriend’s sister, purchased a villa there for approximately \$475,000. Applicant has a 20% ownership share of the property, which he estimated is now worth \$800,000 to \$1 million. Applicant asked his co-owners to buy him out in 2016, but they did not respond. (GE 1; Tr. 104.) Applicant has owned a 34-foot power boat since 2002 that is now worth about \$20,000. He is considering selling it to help pay his debts. (Tr.

105.) Applicant pays his cohabitant girlfriend \$1,000 a month to cover his living expenses. (Tr. 54.) His credit was rated as fair as of May 2017. Applicant was making timely payments on credit card accounts opened in February 2016 (balance \$2,844) and October 2016 (balance \$2,639); on two credit cards obtained in January 2014, which had respective balances of \$165 and \$4,760; on closed credit card accounts with a balance of \$6,128 and \$5,104; and on a secured loan obtained in March 2004 (balance \$11,314). The creditor in SOR ¶ 1.f was still reporting a charged-off balance of \$42,323. (AE M.)

## **Work Evaluations**

Applicant has an excellent attendance record at work. He has had no lost time in the last five years. He also routinely received merit increases. As of June 1988, he was earning \$25,100 annually. Four years later, his annual salary was \$30,500. When he was named a supervisor in 1993, his annual salary was \$39,000. Over the next 24 years, he received annual increases in his base salary ranging from \$1,500 to \$10,000 to bring his salary to its current \$143,400. (AEs P, Q.) Applicant presented his annual performance appraisals, which cover his work performance from March 2000 to March 2016. Applicant has routinely exceeded his employer's expectations and work requirements. His work has been satisfactory or of highest quality, and he is known for his dependability and being fully engaged in his work. He reportedly had a "very good year" in 2015. (AEs R, T.)

## **Policies**

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

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

mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Section 7 of EO 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline F: Financial Considerations**

The security concerns about financial considerations are articulated in AG ¶ 18:

Failure to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

An applicant is not required to be debt free, but is required to manage his finances in a way as to exhibit sound judgment and responsibility. Applicant exhibited poor financial judgment in several aspects. Financially overextended on credit, he made no payment on the credit card account in SOR ¶ 1.f after January 2013. The creditor cancelled \$38,547 of debt on November 29, 2013. Of even greater security concern, in 2015 primarily, Applicant transferred \$428,000 at the direction of Mr. X, whom he did not know personally, on promises of free government grant money that he unsurprisingly never received. He withdrew \$350,000 from his 401(k) account and obtained three loans totaling \$78,500 (SOR ¶¶ 1.b-1.d) for the funds sent at Mr. X’s request and direction. Applicant had to report the 401(k) withdrawals as income on his tax returns and incurred federal and state tax liabilities for 2015 totaling approximately \$100,000 (SOR ¶ 1.e). Applicant then defaulted on the three loans. AG ¶¶ 19(a), “(a) inability to satisfy debts,” and 19(c), a history of not

meeting financial obligations,” are clearly established. Cancellation of the debt in SOR ¶ 1.f implicates AG ¶ 19(b), “unwillingness to satisfy debts regardless of the ability to do so,” although it must be noted that he settled three other credit card debts totaling approximately \$85,000 for less than their full balances. AG ¶ 19(e), “consistent spending beyond one’s means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators,” is implicated because Applicant had a problem making all of his credit card payments even before his irresponsible transactions involving Mr. X in 2015. AG ¶ 19(f), “failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required,” is triggered because of his sizeable tax delinquency for 2015. While Applicant did not gamble in the sense of placing bets, he borrowed some \$78,500 to pay the fees demanded by Mr. X in return for a promised grant without any legal guarantee or justification for the grant money. The security implications are similar to those contemplated in AG ¶ 19(h), “borrowing money or engaging in significant financial transactions to fund gambling or pay gambling debts,” even if AG ¶ 19(h) does not strictly apply. Likewise, Applicant’s continued concealment of his large monetary loss from his cohabitant girlfriend and his family, including his five adult daughters, is little different from the conduct contemplated within AG ¶ 19(i), “concealing gambling losses, family conflict, or other problems caused by gambling.” Applicant was speculating on a belief that the more fees he paid to Mr. X he would receive a larger return, and he fears losing the respect of his girlfriend and daughters because of his extremely poor judgment.

Applicant has the burden of presenting evidence of explanation, extenuation, or mitigation to overcome the security concerns raised by his poor financial judgment. Under the AG effective for any adjudication on or after June 8, 2017, a record of consumer credit and tax delinquency may be mitigated under one or more of the following conditions under ¶ 20:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;



(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; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's financial problems are too extensive and too recent to favorably consider AG ¶ 20(a). AG ¶ 20(b) has some applicability in that Applicant did not realize at first that the grant program was a scam. However, AG ¶ 20(b) requires that an individual act reasonably under the circumstances. Even assuming that Applicant was so gullible to believe that he would receive free government grant money of \$200,000 then \$400,000 and finally \$900,000 on payment of fees but without having to show some justification, he made several irresponsible decisions that exacerbated his financial problems. He sent large sums of money at Mr. X's direction to non-government addresses. He continued to send money even after Mr. X refused to provide his credentials and after Mr. X told him that he feared a lawsuit. Applicant risked his retirement by draining \$350,000 from his 401(k) account, and by doing so, he incurred his large tax debt. He obtained \$78,000 in loans in an effort to meet Mr. X's increasing demands.

It is unclear when Applicant last shipped or wired funds at Mr. X's direction. The loan in SOR ¶ 1.c, which Applicant admits was incurred to transfer money in the scam, was obtained in January 2016. Despite realizing around November 2015 that he had been scammed and was not likely to recoup any of his money, Applicant was still in contact with Mr. X as of November 2016. According to Applicant, Mr. X was seeking another \$25,000 from him, and he was "stringing [Mr. X] along" to see if he could be caught." However, Applicant had not filed a complaint with law enforcement. Applicant engaged in a troubling course of conduct that is neither adequately explained nor mitigated.

AG ¶¶ 20(c), 20(d), and 20(g) are partially established by Applicant's payments to resolve his delinquent loans in SOR ¶ 1.b-1.d and his tax debts in SOR ¶ 1.e. As of May 2017, Applicant had made six payments of \$890 each to resolve the loans. In January 2017, he began paying \$1,100 a month toward his state tax delinquency and \$870 toward his federal income tax delinquency. Even with these payments, he still owes more than \$60,000 in defaulted loan and approximately \$91,000 in delinquent income taxes. It is going to take years before these debt issues are fully resolved.

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

The Board has previously noted that the concept of a meaningful track record necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic.

See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted). Nonetheless, six months of payments are not enough to inspire confidence in his judgment or to conclude that he is not at risk of having to engage in financially questionable practices to generate funds.

Concerning AG ¶ 20(e), the creditor in SOR ¶ 1.f has forgiven a debt balance of \$38,524, although the debt is still being reported on Applicant's credit record as \$42,323 past due. Applicant has not disputed that he incurred the debt or that he defaulted on the account. AG ¶ 20(e) applies only in that the creditor is not likely to pursue him for the debt. The Appeal Board has held that debt resolution, including a creditor's forgiveness of a debt, is something that a Judge must consider, but it is not dispositive. The judge may consider the underlying circumstances in determining whether the applicant has the judgment and reliability expected of those with access to classified information. See e.g., ISCR 15-04560 (App. Bd. Oct. 21, 2016). Applicant's explanation for the delinquency—that the creditor assessed a high interest rate after he missed a payment—is not a justification for stopping his payments. He also did not handle that account responsibly.

### **Guideline E: Personal Conduct**

The concerns about personal conduct are articulated in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

Concerning the Government's case for disqualification under the personal conduct guideline because of Applicant's transfers of \$428,000 in funds at Mr. X's direction in the hope of a \$900,000 return, and his concealment of that activity from his family and girlfriend (SOR ¶ 2.a), the Appeal Board has held that security-related conduct can be alleged under more than one guideline, and in an appropriate case, be given independent weight under each. See ISCR 11-06672 (App. Bd. Jul. 2, 2012). Applicant exercised questionable judgment when he continued to send money at Mr. X's direction long after a

reasonable person would have questioned the legitimacy of a promise of free grant money from the federal government. When asked why he did not report the scam before May 2017, Applicant responded that he knew the funds he transferred were not traceable. His conduct raises security concerns of the type contemplated within AG ¶ 16(d):

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient in and of itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;

(2) any disruptive, violent, or other inappropriate behavior;

(3) a pattern of dishonesty or rule violations; and

(4) evidence of significant misuse of Government or other employer's time or resources.

AG ¶ 16(e) is implicated because Applicant has not informed his girlfriend or his five adult daughters of the financial scam and his actions in the transfer of some \$428,000 over little more than a year in the hope of a large return. AG ¶ 16(e) provides:

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

(1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

None of the mitigating conditions under AG ¶ 17 apply. As already discussed, Applicant made several transfers of funds at Mr. X's direction in 2015, even after Mr. X refused to provide his credentials. Applicant was still in contact with Mr. X as of November 2016, about a year after he first realized that the promised grant was likely a scam. While he claims that he was stringing Mr. X along to see if he could be caught, Applicant had not reported the scam to law enforcement. Whether he still held out hope that he would obtain the promised \$900,000 or, as he now claims, he put the report of the scam "on the back burner," his conduct from late 2014 to at least November 2016 precludes me from favorably considering AG ¶ 17(c), which provides:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstance that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant has yet to fully acknowledge his responsibility in the scam. He does not show adequate reform under AG ¶ 17(d) by claiming that he is a victim of government impersonation, that he relied in good faith on his aunt, or that he "just wanted to believe it." AG ¶ 17(d) states:

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

AG ¶ 17(e), "the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress," is only minimally established by the fact that he filed a complaint with the FBI the weekend before his security clearance hearing. Applicant has not informed his cohabitant girlfriend or his adult daughters of his considerable financial loss because of his seriously poor judgment. There is no evidence that his security officer or any of his co-workers know that he squandered some \$350,000 of his retirement funds and incurred a significant tax debt in the process. Personal conduct security concerns persist.

## **Whole-Person Concept**

In the whole-person evaluation, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d).<sup>4</sup> Some of the factors in AG ¶ 2(d) were addressed under Guideline F, but some warrant additional comment.

Applicant's performance evaluations document his considerable contributions to his defense contractor employer. However, Applicant has placed his security clearance eligibility seriously in doubt by not acting responsibly in response to an online scam. Whether because he was already into the scam for so much money that he felt he could not walk away or he was pressured by Mr. X to continue to send money, his conduct raises a considerable risk that he may not recognize an improper attempt to gain classified

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<sup>4</sup> The factors under AG ¶ 2(d) are as follows:

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

information or that he may respond inappropriately. He has a history of extensive reliance on consumer credit that raises concerns about his financial management generally. He opened new credit card accounts in 2016 on which he owes outstanding balances, despite being in debt for income taxes totaling \$100,000 and for three defaulted loans totaling approximately \$68,782. 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 (9<sup>th</sup> Cir. 1990). For the reasons noted above, I conclude that it is not clearly consistent with the national interest to continue Applicant's 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:	AGAINST APPLICANT
Subparagraphs 1.a-1.f:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

### **Conclusion**

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

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Elizabeth M. Matchinski  
Administrative Judge