



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



In the matter of: )  
)  
) ISCR Case No. 14-04186  
)  
Applicant for Security Clearance )

**Appearances**

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

08/10/2015

**Decision**

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant’s home loan and some consumer credit accounts became delinquent because of his marital separation and his daughter’s college costs. As of June 2015, he had made the first of arranged monthly payments on five past-due credit card accounts, and he made payments of \$1,000 a month to resolve an \$8,494 state tax delinquency. Yet, he still owes more than \$50,000 in delinquent debt and at least \$7,553 in past-due federal income taxes. Additionally, personal conduct concerns persist because he concealed his cohabitant relationship with a woman involved in criminal activity when he applied to renew his security clearance eligibility. Clearance is denied.

**Statement of the Case**

On January 22, 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 Guideline E, Personal Conduct, and explaining why it was unable to find it clearly consistent with the national interest to grant or continue his security clearance eligibility. The DOD CAF took the action under Executive Order 10865, *Safeguarding Classified Information within Industry*

(February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

Applicant responded to the SOR allegations on February 18, 2015. He requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On April 21, 2015, 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. I scheduled the hearing for May 12, 2015.

I convened the hearing as scheduled. The Government submitted 12 exhibits (GEs 1-12) and Applicant submitted three exhibits (AEs A-C), which were admitted without any objections. A chart prepared by Department Counsel as a supplement to his oral closing argument was marked as a hearing exhibit (HE), but not admitted into the record as a full exhibit. Applicant and his daughter testified, as reflected in a transcript (Tr.) received on May 20, 2015.

At Applicant's request, I held the record open for two weeks for him to submit additional documentary evidence. On various dates between May 18, 2015, and June 12, 2015, Applicant submitted 11 additional documents for the record. Department Counsel filed no objections by the respective deadlines for comment. Applicant's submissions were marked and received as AEs D-N.

### **Summary of SOR Allegations**

The SOR alleges under Guideline F that Applicant owed delinquent consumer credit debt totaling \$37,331 on eight accounts (SOR 1.a-1.h) and past-due state income taxes of \$8,494.14 (SOR 1.i) as of January 22, 2015. Under Guideline E, Applicant was alleged to be in a cohabitant romantic relationship with a woman (hereafter Ms. X) with a criminal history involving drugs and prostitution (SOR 2.a), and to have falsified his September 2013 Electronic Questionnaire for Investigations Processing (e-QIP) by not disclosing that cohabitant relationship (SOR 2.b).

When he answered the SOR, Applicant admitted owing the debts, except for SOR 1.c, which has been turned over to his spouse to pay in their divorce proceedings, and the tax debt in SOR 1.i in that he currently owes \$2,450. He explained that his financial issues arose because he is obligated by the family court to make payments that exceed his monthly income. Applicant indicated that he has had \$500 garnished from each paycheck for the past six months to address his state tax debt and that he is attempting to arrange repayment terms for the debts in SOR 1.a-1.b and 1.d-1.h. Concerning the Guideline E allegations, Applicant denied that he was in a current cohabitant relationship with Ms. X, although he admitted knowing that she has a criminal history. He denied falsifying his e-QIP in that they had cohabited from January 2013 to June 2013 but were no longer living together as of September 2013.

## Findings of Fact

Applicant's admissions to legal repayment liability for approximately \$32,561 in delinquent debt are accepted and incorporated as findings of fact. After considering the pleadings, exhibits, and transcript, I make the following additional findings of fact:

Applicant is a 72-year-old high school graduate, who has been working as a senior test engineer for a defense contractor since April 2007. He served in the United States military under the occupational specialty of sonar technician from June 1960 to June 1988. He enlisted in the reserves but then went on active duty from February 1961 to May 1972 before finishing in the active reserve. He retired with an honorable discharge at the rate of senior chief in June 1988. (Tr. 138.) From July 1972 to January 1997, he was employed by a branch of the U.S. military as a civilian electronics technician. He retired from his civil service position at GS-12 Step 10 pay. (Tr. 138.) From 1998 to April 2007, Applicant was a vice president for a defense contracting company that is no longer in business. (GEs 1, 3; Tr. 57-59.) Applicant resigned from that position after the owner's son diverted company funds to his own purposes.<sup>1</sup> (GE 3.) He held a secret-level security clearance in that job and it was renewed for his work with his current employer. (GE 1.)

Applicant was married to his first wife from July 1965 to June 1988. They had four sons and a daughter, who are now successful adults living on their own. Applicant has six grandchildren. (GE 1; Answer; Tr. 60, 139-140.) Applicant and his second wife married in May 1991, and they have a daughter, who is a 20-year-old college student. Applicant and his second wife have been separated since January 2013, and they are in divorce proceedings. (GEs 1, 3; Tr. 60-62.) Applicant has helped some young people over the years, including his youngest daughter's former boyfriend from 2012 to 2014. Applicant found the teen a place to live and paid for some of his necessities. (Tr. 19-20, 25, 141.)

## Financial Issues

Applicant's marriage to his second wife deteriorated in part because of a personality change in his spouse after she had a medical issue some seven years ago and her overspending on non-necessities. (Tr. 33-36, 66-67.) Applicant and his spouse each filed for divorce around the same time. In September 2013, Applicant's spouse was awarded exclusive use of the marital home. Applicant was ordered by the court to pay the mortgage, insurance, and utilities (water, electricity, and heating). His spouse was assigned responsibility for prospective cable, Internet, and telephone (landline) costs. Applicant was to continue to pay the current cell phone plan, which covered his spouse, and to pay \$1,000 bi-weekly to his spouse pending a final financial agreement. He was enjoined from withdrawing funds from any retirement account, including any IRA. (AE D.) Applicant and his spouse mutually agreed that he could have access to the garage and the outdoor areas. (GE 3.)

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<sup>1</sup> Applicant testified discrepantly that he went into business with a partner and then closed the business when he caught his retired partner's son, then the chief financial officer, committing fraud with his spouse. (Tr. 138-139.)

With his alimony obligation and the costs of maintaining a separate residence, Applicant could not keep up with all his financial obligations. On his e-QIP, which he completed and certified on September 26, 2013, Applicant listed some delinquencies: a personal loan of \$14,000 (SOR 1.b); a credit card debt of \$1,300 on which he was making small payments (not alleged); an \$8,000 credit card debt (SOR 1.d); his home mortgage with a \$71,000 balance (SOR 1.a); a \$5,000 credit card debt that he was repaying (SOR 1.e); a \$14,000 loan that he had brought up-to-date (not alleged); and his \$30,000 car loan on which he was behind less than 30 days (not alleged). He provided the following explanation for all of the delinquencies:

I separated from my wife in January 2013. I gave her my paychecks, [two] a month and two retirements. I kept my social security and was on travel so I lived on my social security and per diem. She did not pay any of the bills and spent the money. We now have a court order what I am to provide her which I do and the bills to pay. I have agreements with all of the peoples I owe money to to [sic] make short payments and I am playing catchup on all of the bills. I also have a daughter in college as a freshman. Her mother also spent all of her saved college money but we are getting by. I am now getting my paychecks and retirements which I use to pay my rent/utilities/food and court obligations. (GE 1.)

Applicant's youngest child started college in the fall of 2013. She has received tuition assistance in the form of grants to reduce her tuition obligation from \$6,000 to only \$560-\$670 a semester (Tr. 136), but Applicant gives her the funds to cover her \$760 monthly rent, her utilities, her books, her cellphone bill, her monthly cable bill at \$200, and her groceries. (Tr. 18-25, 137.) She testified that Applicant has always been very supportive personally and financially. (Tr. 21.)

As of March 6, 2014, Applicant had several delinquent accounts on his credit record, as reflected in the following table.

Debt in SOR	Delinquency history	Payment status
1.a. \$3,042 past-due credit union account	\$148,300 VA joint mortgage opened Jun. 1993; \$3,042 past due on \$73,093 balance as of Feb. 2014; \$13,667 past due as of Dec. 2014. (GEs 2, 12; Tr. 117.)	Foreclosure initiated as of Dec. 2014 (GE 12); as of Apr. 2015, seeking home loan modification from lender (AE G); home has been listed for sale since early 2015. (AE N; Tr. 117, 119.)
1.b. \$13,093 loan in collection	\$13,100 line of credit account opened Sep. 2000; last activity Jun. 2013; \$13,093 past due as of Jan. 2014; sold or charged off as of Jan. 2014. (GEs 2, 12.)	As of May 2015, new holder of debt had brought him to court; not resolved. (Tr. 118.)

1.c. \$7,220 department store revolving charge in collection	Joint revolving charge opened Mar. 2002; credit limit \$5,300, last activity May 2013; \$7,200 in collection Dec. 2013. (GEs 2, 12.)	Claims spouse held responsible for debt (Tr. 118); per property settlement, Applicant is responsible for any joint liabilities. (AE E.)
1.d. \$7,001 charged-off debt	Joint revolving charge opened Oct. 1992, \$6,300 credit limit; \$8,884 high credit; last activity May 2013; \$7,001 charged off Nov. 2013. (GEs 2, 12.)	Began repaying at \$33.33 monthly Jun. 11, 2015. (AE M.)
1.e. \$143 past-due debt	Credit card account opened Dec. 2006, \$4,700 credit limit; \$5,261 high credit; \$143 past due 120 days as of Feb. 2014 (GE 2); \$5,539 charged-off balance as of Jun. 2014. (GE 12; AEs H, L.)	Arranged to repay the debt at \$109.74 monthly; made first payment due Jun. 1, 2015. (AEs H, L.)
1.f. \$3,004 charged-off furniture store debt	Individual charge account opened Feb. 2013; \$3,035 high credit; last activity Aug. 2013; \$3,004 charged off Feb. 2014 (GE 2); \$3,005 for collection Mar. 2014, unpaid as of Aug. 2014. (GE 12.)	Began repaying at \$33.33 monthly Jun. 11, 2015. (AE M.)
1.g. \$2,094 charged-off debt	Revolving charge opened Feb. 2013; \$2,500 high credit; last activity Sep. 2013; \$2,094 charged-off balance as of Feb. 2014 (GE 2); \$2,129 balance as of Dec. 2014. (GE 12.)	Began repaying at \$33.33 monthly Jun. 11, 2015. (AE M.)
1.h. \$1,734 charged-off credit card debt	Joint credit card account opened Oct. 2002, high credit \$8,064; last activity Aug. 2013; \$1,734 charged off Jan. 2014; unpaid as of Dec. 2014. (GEs 2, 12.)	No evidence of repayment arrangements as of Jun. 2015.
\$156 past-due on unsecured loan (not alleged)	\$3,300 loan opened Apr. 2013; \$156 past due 30 days as of Jan. 2014 on \$2,417 balance (GE 2); \$1,792 charged-off balance as of Nov. 2014. (GE 12.)	No evidence of repayment arrangements as of Jun. 2015.

On March 25, 2014, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). He admitted that he was behind two months on his mortgage payment and one month behind on the personal debt in SOR 1.b. He recognized the revolving charge debt of \$7,720 (SOR 1.c) as incurred by his spouse during their marriage. He did not deny the furniture debt in SOR 1.f or the credit card debt in SOR 1.g, acknowledging respective balances of \$851 and \$412. Applicant did not deny that the account in SOR 1.h had been charged off, but he believed he did not have to pay the debt because it had been charged off. Applicant attributed his financial difficulties to his spouse's overspending during their marriage; his payment of \$2,000 per month in alimony pending their divorce settlement; and the expenditures for two households. He expressed intent to repay his debts after his divorce is settled, which he expected in the summer of 2014. Applicant estimated his net monthly income at \$8,000, his monthly recurring expenses at \$3,655 (including \$700 for his daughter's college costs), and his monthly recurring debts at \$3,770 (not including any payments on the credit cards or loans pending settlement in the divorce). He reported a monthly arrearage of about \$1,100 in his alimony payments. (GE 3.)

In mid-April 2014, Applicant and his spouse entered into a property settlement agreement. Applicant agreed to purchase for \$95,000 his spouse's interest in the marital home, which had a tax-assessed value of \$221,700 and an estimated market value of \$231,700. If Applicant was unable to buy her out, the property was to be listed for sale, with 60% of the sales proceeds going to his spouse and Applicant receiving 40%. Applicant and his spouse each kept their respective vehicles, and to be responsible for the costs of maintenance, registration, and insurance. They agreed to split all bank account assets. Applicant agreed to be legally liable for repayment of any joint credit card liabilities. Individual accounts were to be the sole responsibility of the account holder with the other held harmless. Federal and state tax returns for 2013 were to be filed jointly, but Applicant was held liable for any indebtedness while any refunds were to be split. Applicant kept his full military pension. Applicant agreed to pay his spouse her interest in his federal civil service pension until she receives payment from OPM. In return, his spouse waived all rights to alimony payments. (AE A.) On April 24, 2014, Applicant was billed \$8,350 by his divorce attorney: \$4,575 in previous balances and \$3,775 for professional services since February 3, 2014. (AE F.)

Around May 2014, Applicant was evicted from his apartment for nonpayment of rent for six months.<sup>2</sup> (Tr. 102.) His spouse was living with her boyfriend, but she would not allow Applicant to stay in the marital home. Applicant resided at a friend's house or in a cheap motel or sometimes in his car or truck. He had no permanent address until he moved into the marital home, which had been vacant since his spouse went to live with her boyfriend. (Tr. 38.)

As of January 2, 2015, the mortgage on the marital home (SOR 1.a) was \$13,667 past due and the lender had initiated foreclosure proceedings. The credit card debt in SOR 1.e had been charged off with a \$5,539 delinquent balance, while the loan that was past

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<sup>2</sup> Applicant initially testified that he quit paying the rent after he and Ms. X had a theft and the landlord claimed that they broke in themselves. (Tr. 64.)

due \$156 as of January 2014 had been charged off for \$1,792. Applicant's spouse had made no payments toward the store credit card debt in SOR 1.c. The debts in SOR 1.b, 1.d, and 1.f-1.h had not been paid. A credit card opened in September 2013 with a \$700 credit limit had been charged off for \$855 due to nonpayment since March 2014. A home equity line of credit, opened in July 2005 for \$15,000, was current, but it had been delinquent as recently as June 2014. Applicant was making timely payments of \$647 per month on a \$35,130 car loan opened in December 2012, although his account had been past due in the summer of 2014. (GE 12.) Applicant has not considered selling the car to alleviate some of his other debts. His social security income goes to his car loan. (Tr. 127-128.)

Applicant's retirement pay was garnished by the Internal Revenue Service (IRS) to pay off a tax debt of undisclosed amount for tax year 2012. (Tr. 126.) As of May 20, 2015, the Internal Revenue Service notified Applicant and his spouse that they owe \$7,553.59 in past-due taxes, penalties, and interest for tax year 2013. (AE I.) Applicant is obligated under an installment agreement to repay the debt at \$120 per month with the first payment due by June 1, 2015. (AE I.) Applicant had insufficient taxes withheld from his military and civilian retirement incomes.<sup>3</sup> (Tr. 124.) Applicant also owed around \$8,494 in delinquent state income taxes (SOR 1.i). Around July 2014, Applicant arranged a garnishment of his wages at \$500 each payday. As of February 13, 2015, he owed approximately \$2,450 in back state taxes. (Answer; Tr. 125.) He had resolved or nearly resolved his state tax debt for 2012 as of May 2015. However, he owes delinquent state taxes for 2013 that he has not started repaying as of May 12, 2015.<sup>4</sup> (Tr. 125.)

Applicant's annual salary is \$129,000. (Tr. 60.) After his security clearance hearing, Applicant began making payments toward some of his past-due consumer credit debts. He arranged to pay the \$855 charged-off credit card debt (not alleged) in \$25 increments by pre-authorized check. Payments of \$25 each were made on May 29, 2015, and June 12, 2015. (AEs K, M). He issued a check in May 2015 for \$109.74, which was applied by the creditor in SOR 1.e to his \$5,539 balance on June 1, 2015. (AE L.) In June 2015, he began making \$100 monthly payments, to be distributed equally to the creditors in SOR 1.d, 1.f, and 1.g. (AE M.)

Applicant is currently residing in the residence he had shared with his spouse during their marriage, although he has not made the mortgage payment since October 2013. He could not afford to maintain the payments because of his court-ordered payments to his

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<sup>3</sup> About his past-due tax debts, Applicant explained, "It becomes quite apparent at this time that you're looking at a 72-year-old man who is lazy and I have two retirements, of which they don't take enough out of, and that's that number right there." He acknowledged that he had zero taxes withheld from one retirement income. (Tr. 124.)

<sup>4</sup> The SOR alleges that Applicant owed delinquent state taxes of \$8,494.14 as of January 2015. In his Answer, Applicant indicated that he had \$500 garnished from his wages each payday for the last six months to reduce the debt to \$2,450. At his hearing, he was asked why he still owes \$8,400. He responded that he just finished paying his delinquent state taxes for 2012, but he owes for tax year 2013. He has yet to make arrangements with the state to repay his delinquent taxes for that year. (Tr. 124-125.) There is no documentation showing the amount of his state tax liability as of May 2015.

spouse pending their divorce and IRS garnishment of his retirement income. (Tr. 117, 120-122.) In mid-winter 2015, Applicant listed his and his spouse's marital home for sale for \$269,000. (Answer; 119-121.) He applied for a hardship loan to cover the deficiency balance of his mortgage. (Tr. 118.) After his security clearance hearing, Applicant changed realtors. He expects to be able to clear his remaining debts once the house sells. (AE N.)

Applicant's daughter believes that her mother is taking more money from her father than is fair. In her opinion, her father deserves to keep his security clearance. (Tr. 32.)

## **Personal Conduct**

Applicant and Ms. X first met at a picnic in October or November 2012. They moved into an apartment together in January or February 2013, cohabiting initially as friends. Applicant knew she was a drug addict, who had been using heroin, and that she had worked as a prostitute. (Tr. 65, 72.) Shortly after Applicant and Ms. X began cohabiting, an anonymous letter was sent to Applicant's employer informing that Applicant was affiliated with a drug-addicted prostitute. Applicant testified that he explained to his security officer that Ms. X was "getting off the drugs," and that they were going to maintain a nice home environment. (Tr. 105.) According to Applicant, his employer took no action because the letter had come into the facility unopened and unsigned. (Tr. 106.)

Court records show that Ms. X pleaded nolo contendere in July 2009 to disorderly conduct/domestic and was ordered to counseling. (GE 9.) She pleaded nolo contendere to driving with a suspended license in September 2009 (GE 10) and October 2009. (GE 7.) In July 2012, she was arrested for felony larceny, but the charge was dismissed in March 2013 under a pretrial diversion program. (GEs 5, 8.) About six months into their cohabitant relationship, Ms. X told Applicant that she had a criminal record. (Tr. 85.)

Ms. X entered a drug cessation program where she was taking Suboxone in January 2013, and he wanted to "help her become a normal person." By May or June 2013, they were romantically involved. By June or July 2013, she was again abusing heroin and out of the drug cessation program. Applicant suspected that she was using illegal drugs and confronted her several times that summer. (Tr. 72-75.) She lied to him about her drug abuse. (Tr. 79.) Applicant tried to keep her away from her drug-using friends by not allowing them to visit. (Tr. 88.)

On his September 2013 e-QIP, Applicant responded "No" to whether he was presently residing with a cohabitant, defined as a person with whom he shared bonds of affection, obligation, or other commitment. He listed Ms. X as a friend who could verify his address, however, and indicated that she was living at his address. (GE 1.) When he was interviewed by the OPM investigator on March 25, 2014, Applicant indicated that he has lived with cohabitant Ms. X since January 2013 and that he did not disclose her as his cohabitant due to oversight. He added that after meeting Ms. X, he learned that she had a history of drug abuse, primarily heroin, and that she was a prostitute. Applicant added that to his knowledge, she has neither engaged in those activities or been arrested since they

began cohabiting. (GE 3.) He now claims to not recall that he told the OPM investigator that he and Ms. X had been cohabiting since January 2013. (Tr. 104.)

Applicant initially testified at his security clearance hearing that he and Ms. X cohabited from February 2013 until March 2014. (Tr. 64.) He later testified discrepantly that he became “fed up” with Ms. X in October 2013, and that they separated until December 2014. She tried several times to come back and live with him, but he would not allow it. He knew that she had returned to abusing drugs and to prostitution. (Tr. 80-81.) When asked about his failure to list Ms. X as a cohabitant on his e-QIP in September 2013, Applicant responded: “I split with her less than two weeks after that. She wasn’t even in the apartment then. She was gone, so I considered myself alone. That’s why I said no.” He claimed that he no longer considered Ms. X his girlfriend at the time [“She was just somebody that had stuff in the apartment and I was getting ready to get out of there.”]. (Tr. 100.)

Available court records show that Ms. X was arrested in late January 2014 on misdemeanor charges of obstructing a police officer and falsely reporting a crime. According to Applicant, she broke into the apartment that they had shared until October 2013 and stole a television and small computer. He reported the breaking and entering to the police. She reported to the police that the items had been stolen when she had taken them. (Tr. 83-84.) In February 2014, she pleaded nolo contendere to filing a false report and was placed on one year of probation. The obstruction charge was dismissed. (GE 4.)

In June 2014, Ms. X was arrested by the state police for felony possession of a controlled substance and for driving while in possession of a controlled substance (GE 6), in violation of her probation on the obstruction charge. (GE 4.) He was out of the state on temporary duty for his employer, and he gave Ms. X permission to use his truck. She was stopped for speeding and had illegal drugs and syringes in her purse.<sup>5</sup> (Tr. 93.) In November 2014, she was arrested by local police for felony drug possession and for driving while possessing a controlled substance. (GE 11.) Ms. X was driving a known drug seller when they were stopped by the police conducting a drug sweep. The police searched the car and found a bag of heroin under the front seat, which Applicant asserts belonged to the drug seller. For violating her probation on the January 2014 obstruction charge for a second time, Ms. X was sentenced to 29 days in jail, and placed on 11 months of probation. The November 2014 charges were dismissed. (GE 4; Tr. 89-92.)

While in a state adult correctional institution in December 2014, Ms. X contacted Applicant. Applicant told her that if she would stop using illegal drugs, he would help her. On her release from incarceration, she enrolled in a drug treatment program and court-

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<sup>5</sup> Applicant testified that at the time, he and Ms. X were acquaintances only, and that he gave her use of his truck to move some of her belongings from the apartment that she had already left. (Tr. 94.) When asked why he would allow her to use his vehicle if he had no reason to think she had stopped abusing drugs, had lied to him, was involved in criminal activity, and had stolen items from the apartment in January 2014, Applicant responded, “Because she was riding with a person to go pick up the stuff at the apartment, that [he] knew was not high on drugs, and would go there with the truck, and then return the truck.” (Tr. 95.) He added that he was “sick and tired of dealing with a person like that, and it gave [him] a great education on people who take crack cocaine or heroin.” (Tr. 96.)

ordered counseling, and she moved in with Applicant. (Tr. 76-78.) Applicant believes Ms. X has not used any illegal drug or engaged in prostitution since December 2014. Ms. X is subjected to random drug testing and has been tested at least weekly. She has shown him some drug test results, including as recently as early May 2015, which were negative. (Tr. 78-79.) She takes methadone to assist her in recovery and will not be discharged from the program until she is safely off the methadone. (Tr. 79.) On May 21, 2015, the June 2014 drug possession and driving while in possession charges pending against Ms. X were dismissed. (AE J.) At his security clearance hearing, Applicant testified that the state police had not brought any evidence implicating Ms. X before the court, in violation of a criminal defendant's right to a speedy trial in the state. (Tr. 92.) The available court record (AE J) sheds no light on why the judge dismissed the charges.

As of May 2015, Applicant was cohabiting with Ms. X. He testified initially that they were "very close friends," and he did not consider her his girlfriend. (Tr. 76, 81.) Ms. X has romantic feelings for Applicant. (AE C.) When asked whether Ms. X considers them to be romantically involved currently, Applicant responded, "We have a romantic relationship at this time, yes." (Tr. 150.) Ms. X is not working presently but has just returned to cosmetology school. (Tr. 97-98.) Applicant's youngest daughter has met Ms. X, although she is not sure whether her father's relationship with Ms. X goes beyond friendship. (Tr. 28.) She believes her father supports Ms. X financially. (Tr. 29.) She knows Ms. X was involved in prostitution before Ms. X met her father. (Tr. 30.)

Applicant presented character references from a longtime friend and colleague (AE A) and from a former student intern (AE B) Applicant has shown himself to be professional, diligent, and honest on the job. He has handled classified information appropriately. (AE A.) Applicant generously gave of his time and attention to the student intern, helping in the student's transition to college and its rigorous course load. (AE B.) Applicant is in charge of approximately \$300,000 worth of equipment at work. (Tr. 145.)

## **Policies**

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

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

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

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern about financial considerations is articulated 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 Guideline F concerns are amply established. The evidence indicates that some \$55,145 in debt in his name was charged off or placed for collection in 2014, including a \$1,792 credit card debt that was not alleged and a more significant debt balance on the account in SOR 1.e (\$5,539) than the \$143 alleged. A debt not alleged in the SOR cannot provide a basis for disqualification, but it is relevant to assessing whether Applicant has demonstrated sufficient reform in light of the full extent of his delinquent debt burden.<sup>6</sup> At

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<sup>6</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

one point, Applicant also owed delinquent state taxes of \$8,494 (SOR 1.i). Through wage garnishment of \$500 each payday starting around July 2014, he had resolved his delinquent state tax balance for 2012, but he owes federal and state income taxes for 2013. Two disqualifying conditions under AG ¶ 19 apply because of his record of financial delinquency:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Mitigating condition AG ¶ 20(a), “the behavior happened so long ago, was so infrequent, or occurred under circumstances that it is unlikely to recur and does not cast doubt on the individual’s current, reliability, or good judgment,” cannot reasonably apply. The accounts in the SOR became seriously delinquent in 2013 or 2014.

Applicant’s financial problems stem largely from his pending divorce. When he and his spouse separated in January 2013, he had the costs of a separate residence while also continuing to financially support his spouse and their daughter, who was still in high school. In September 2013, Applicant’s spouse was awarded exclusive use of the marital home. Applicant was ordered by the court to pay the mortgage, insurance, and utilities (water, electricity, and heating). Applicant was to continue to pay the current cell phone plan, which covered his spouse, and to pay \$1,000 bi-weekly to his spouse pending a final financial agreement. He was enjoined from withdrawing funds from any retirement account, including any IRA. Marital separation and divorce are circumstances contemplated in mitigating condition AG ¶ 20(b):

- (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.

However, AG ¶ 20(b) does not alleviate the financial burden of more than \$50,000 in delinquent debt. Nor does it eliminate the financial judgment concerns raised by Applicant’s failure to adjust his income tax withholdings. He has no taxes withheld from one of his retirement incomes. Consequently, the IRS garnished his wages to pay his 2012 taxes, and he owes the IRS \$7,553 for tax year 2013 that he has to repay at \$120 per month. He also owes delinquent state taxes for 2013 in an undisclosed amount that have yet to be resolved. Furthermore, he made little effort to resolve his delinquent consumer credit debts before the SOR was issued. He recently arranged for small monthly payments on five accounts, despite ongoing payments to his spouse of \$2,000 a month and garnishment of his wages for back taxes. He offered no reasonable explanation for his failure to at least attempt to negotiate similar payments with his creditors before May 2015.

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person analysis under Section 6.3 of the Directive. See, e.g., ISCR Case No. 09-07219 (App. Bd. Sep. 27, 2012). The unalleged delinquency is relevant to assessing Applicant’s financial judgment generally and the risk of recurrence of financial difficulties.

Concerning his state tax debt in SOR 1.i, Applicant indicated in response to the SOR that he owed \$2,450 as of February 2015 after twice monthly payments of \$500. It is unclear whether the \$8,494 state tax delinquency covers tax year 2012, 2013, or both years. Regardless, Applicant's payments at \$500 per paycheck since approximately July 2014 toward his delinquent state taxes implicate two mitigating conditions under AG ¶ 20:

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

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

It would be premature to apply either AG ¶ 20(c) or AG ¶ 20(d) to the other debts in the SOR. As of May 2015, Applicant was seeking a modification of his seriously delinquent mortgage (SOR 1.a); although there is no evidence that he had submitted the necessary paperwork. His home was listed for sale, but he changed realtors after his hearing. The creditor attempting to collect the debt in SOR 1.b is pursuing him in court. Applicant has just started repaying the debts in SOR 1.d-1.g. He has made no payments toward the debt in SOR 1.h. With respect to the debt in SOR 1.c, Applicant submits that his spouse is supposed to pay the debt under their divorce settlement. However, their property settlement agreement states that they agree to be solely liable for any and all credit obligations "incurred in their own named and standing in their name alone," and that Applicant is responsible for any joint liabilities. SOR 1.c is listed as a joint account on his March 2014 credit record. He has made no payments toward that debt that could satisfy AG ¶ 20(b) or AG ¶ 20(c). He also has not met his burden of satisfying AG ¶ 20(e), which provides as follows:

(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.

Nothing in the Directive requires that Applicant be free of delinquent debt for him to be granted security clearance eligibility. He expects to be able to resolve all his delinquencies once his home sells. He owed \$71,341 of his original \$148,000 mortgage balance as of December 2014. The proceeds from a sale of the property might well cover all of his delinquencies. He has not made enough progress toward resolving his debts at this point to adequately mitigate the security risk, however.

### **Guideline E, Personal Conduct**

The security 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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

About the alleged personal conduct concerns raised by Applicant's cohabitant personal relationship with Ms. X (SOR 2.a), the evidence shows that Applicant was aware of Ms. X's heroin abuse and of her involvement in prostitution when they began living together in late January 2013. They began renting an apartment together initially as friends. He testified that he wanted to help Ms. X, who had entered a drug treatment program. By May or June 2013, they were romantically involved. By June or July 2013, she was again abusing heroin and out of the drug cessation program. Applicant suspected that she was using illegal drugs, and he confronted her several times that summer. He testified that he had "kicked out" Ms. X from their apartment in October 2013 because of her drug use, and that they lived apart until December 2014, when she was released from incarceration for violating her probation. As of May 2015, they were still cohabiting. Although Applicant initially testified that he does not consider Ms. X his girlfriend, he later acknowledged they have a romantic relationship. Ms. X attests to having romantic feelings for Applicant.

As a threshold matter, the DOD is not in the business of dictating the personal relationships of cleared individuals. Yet, the association with persons involved in criminal activity raises security concerns under AG ¶ 16(g). Even if I accept that Applicant and Ms. X had lived apart in 2014, Applicant reconciled with Ms. X, knowing about her history of drug relapse and that she had been arrested in January 2014 for breaking into his apartment, and in June 2014 for illegal heroin possession while driving his truck. AG ¶ 16(g), "association with persons involved in criminal activity," is implicated because of his close, personal relationship with Ms. X.

In mitigation, Applicant has never condoned Ms. X's criminal activity, including her heroin involvement and her prostitution. His relationship with her has not led him to abuse drugs. Ms. X's current efforts to overcome her drug addiction include participation in substance abuse treatment program consisting of counseling, Suboxone medication, and drug screens. Applicant's current association with Ms. X is presently under circumstances that do not cast doubt on Applicant's judgment. AG ¶ 17(g) applies:

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Applicant did not indicate on his September 2013 e-QIP that he had a cohabitant relationship with Ms. X (SOR 2.b). Yet, when he was interviewed by the OPM investigator in March 2014, he discrepantly indicated that he and Ms. X had been cohabitants since January 2013 and that he had daily contact with her. He attributed to oversight his failure to list her as a cohabitant. When he answered the SOR, he denied that he intentionally

concealed his relationship with Ms. X and claimed that they lived together from January 2013 to June 2013. He initially testified at his security clearance hearing that he and Ms. X cohabited from February 2013 until March 2014. However, he later claimed that he became “fed up” with Ms. X in October 2013, and that they separated until December 2014. When asked about his failure to list Ms. X as a cohabitant on his e-QIP in September 2013, Applicant responded: “I split with her less than two weeks after that.” Applicant’s inconsistent accounts of his cohabitant relationship with Ms. X make it difficult to accept that his omission of the cohabitant relationship from his e-QIP was inadvertent, notwithstanding that he had listed her as a friend who could verify his address. AG ¶ 16(a) applies:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant’s disclosure of his cohabitant relationship with Ms. X to the OPM investigator is considered a good-faith effort at rectification that could be mitigating under AG ¶ 17(a), “the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts.” The mitigating impact of that disclosure is seriously undermined, however, by Applicant’s inconsistent statements about his relationship with Ms. X when he answered the SOR and at his security clearance hearing. In addition to the discrepancies noted above, Applicant testified about his current relationship with Ms. X that they were “very close friends,” but that he did not consider Ms. X his girlfriend. (Tr. 76, 81.) Yet, when asked whether Ms. X considers them to be romantically involved currently, Applicant responded, “We have a romantic relationship at this time, yes.” (Tr. 150.) Persistent concerns about Applicant’s credibility make it difficult to apply either of the mitigating conditions AG ¶ 17(c) or AG ¶ 17(d) to the e-QIP falsification. AG ¶ 17(c) and AG ¶ 17(d) provide as follows:

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

(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 cause untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of his conduct and

all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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.

The financial analysis under Guideline F and the personal conduct analysis under Guideline E are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant has spent his entire career in the service of the United States. He retired from the military and then from federal civil service before working as a defense contractor. While his years of work for the DOD weigh in his favor, his financial difficulties and personal conduct concerns call into question his judgment, reliability, and trustworthiness. 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, based on the facts before me and the adjudicative guidelines that I am required to consider, I am unable to conclude that it is clearly consistent with the national interest to grant or continue security clearance eligibility for Applicant at this time.

### Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT

Subparagraph 2.a: For Applicant  
Subparagraph 2.b: Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to 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