



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



In the matter of:)
)
 REDACTED) ISCR Case No. 14-04320
)
 Applicant for Security Clearance)

Appearances

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

05/31/2016

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

While out of work following an injury in February 2011, Applicant became seriously delinquent on some consumer credit accounts, including his home loan. He obtained a modification of his mortgage loan in October 2015 on his third application. Applicant has not addressed approximately \$8,127 in delinquent debt balances, including a recent loan default for \$2,306, but he is not taking on new debt that could further compromise his finances. Clearance is granted.

Statement of the Case

On May 18, 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 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.

On June 17, 2015, Applicant answered the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On October 22, 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 him. On November 3, 2015, I scheduled a hearing for December 1, 2015.

I convened the hearing as scheduled. Seven Government exhibits (GEs 1-7) and two Applicant exhibits (AEs A-B) were admitted into evidence without objection. Applicant testified on his behalf, as reflected in a transcript (Tr.) received on December 9, 2015.

I held the record open until January 4, 2016, for post-hearing submissions from Applicant. On December 31, 2015, Applicant timely submitted nine documents (AEs C-K). On January 7, 2016, Department Counsel indicated that the Government had no objections to the admission of AEs C-K, so the exhibits were received in evidence.

Summary of SOR Allegations

The SOR alleges under Guideline F that, as of May 18, 2015, Applicant's mortgage loan was \$32,299 past due and in foreclosure (SOR 1.a). Additionally, he owed collection balances totaling \$4,208 (SOR ¶¶ 1.b, 1.d, 1.h-1.j), charged-off balances totaling \$8,213 (SOR ¶¶ 1.c, 1.e-1.f, 1.k), and a \$2,391 judgment debt (SOR ¶ 1.g). When he answered the SOR, Applicant denied the mortgage delinquency and explained that in July 2014, he had been approved for a mortgage modification that would be finalized in July 2015. Applicant indicated that SOR ¶¶ 1.b, 1.c, 1.f, and 1.g alleged the same debt, which was currently held by the creditor in SOR ¶ 1.g. Applicant admitted the debts in SOR ¶¶ 1.d-1.e and 1.g-1.k, and added that he was working out a payoff of the debt in SOR ¶ 1.k.

Findings of Fact

After considering the pleadings, exhibits, and transcript, I find that SOR ¶¶ 1.b, 1.f, and 1.g are the same debt, and SOR ¶¶ 1.c and 1.k are the same debt. Additional findings of fact follow.

Applicant is a 33-year-old high school graduate with some community college credits. He has never married, but he and his fiancée have been in an on-and-off cohabitant relationship since July 2001. Applicant has an eight-year-old daughter who lives with them. Applicant has worked for a defense contractor since February 2003 and has held a secret security clearance since April 2003. (GEs 1, 2; Tr. 21-25.)

Applicant took on a sizeable amount of debt between February 2006 and January 2009. In February 2006, Applicant bought a three-bedroom ranch-style home with a conventional 30-year mortgage loan of \$148,824. Monthly loan payments were

approximately \$1,346. (GE 5; AEs C, I.) In August 2006, he bought a vehicle through a loan of \$27,825. Already paying \$449 per month for that vehicle (GE 4), Applicant purchased a 2002 model-year high performance vehicle in June 2007. He obtained a \$20,522 loan from a credit union, to be repaid at \$312 per month for 84 months (not alleged in the SOR).¹ In May 2008, Applicant paid for a motorcycle with a \$14,638 loan, to be repaid at \$221 per month for 99 months (SOR ¶¶ 1.c and 1.k, same debt). (GEs 5, 6.) In January 2009, Applicant purchased a dog from a pet shop for approximately \$2,900. (Tr. 58-60.) He relied at least in part on credit. His May 2013 credit report shows a high credit of \$2,230 on the account (SOR ¶¶ 1.b, 1.f, and 1.g same debt).² (GEs 5, 6.) Applicant intended to breed the dog. When he learned that the dog was not suitable for breeding, he tried to return the animal. The seller refused to credit his account, so Applicant decided not to pay the debt. Around December 2009, his account was closed and referred for collection with a balance of \$2,391. (GEs 5, 6.)

Around 2009, Applicant allowed a friend to borrow the vehicle that he bought in June 2007 with the credit union loan. Applicant had just put a new transmission in the vehicle at a cost of \$5,000. (Tr. 98.) The friend took over the car payments while Applicant kept the car insurance and registration in his name. Applicant made timely payments at \$449 per month on his other car loan opened in August 2006, and he paid it off in December 2010. In November 2010, Applicant opened a new car loan for \$22,054, to be repaid at \$372 per month. (GEs 3-5.) Also, around 2010, Applicant had to replace his washer and dryer and some drywall at a total cost of almost \$3,000 after his basement flooded. (Tr. 95.)

Applicant was injured at work in late February 2011.³ He was placed on light duty for three or four weeks and then on leave for lack of work. His attorney advised him to press for worker's compensation rather than short-term disability, and he filed a claim around late March 2011. Applicant had no income, and his fiancée was in cosmetology school at the time. Applicant made some partial payments on his mortgage, and fell behind 30 to 60 days on his loan. (GE 5; Tr. 35-36.) While he apparently returned to work around January 2012 (Tr. 34-35), he struggled to catch up on his mortgage (SOR ¶ 1.a). Applicant's friend

¹ Applicant testified that he purchased the vehicle for \$11,000 or \$12,000. (Tr. 114.) However, the credit reports in the record reflect a much larger loan.

² Applicant testified that he had only one account with the creditor, which was opened to purchase the dog. (Tr. 74.) As of May 2013 (GE 5), Applicant's credit report listed the account under the original lender with a past-due high credit balance of \$2,391 that was sold in December 2009 and as a collection account with a balance of \$2,855 as of May 2013. His credit report of April 2014 (GE 4) lists the account twice, as a zero balance with the original lender and as a collection balance of \$2,956 with the assignee in SOR ¶ 1.g. As of February 2015 (GE 3) and September 2015 (GE 7), Equifax was reporting the debt as a zero balance with the original creditor and as a \$2,503 judgment held by the collection agency in SOR ¶ 1.g. Based on the account numbers and balance information, it appears that the account was opened with the creditor in SOR ¶ 1.f and charged off for \$2,391 before being sold for collection to the creditor in SOR 1.b, who then obtained a judgment of \$2,503, as shown in SOR 1.g.

³ Applicant told an OPM investigator in May 2013 that he injured himself at work in 2010. (GE 6.) At his hearing, he insisted that his injury occurred in early 2011; that he had surgery about six months later for his injury; and that he returned to work in January 2012. (Tr. 28-35.) The attorney who represented him in the worker's compensation action indicates that Applicant was injured on February 28, 2011. (AE E.)

stopped making the payments on the car he borrowed, and Applicant demanded that he return the car if he was not going to pay for it. The car was in poor condition and not drivable. (GE 6; Tr. 111.) In October 2012, Applicant voluntarily surrendered the car because he could not afford the payments. (GE 5.) He tried unsuccessfully to sell the motorcycle (SOR ¶¶ 1.c and 1.k, same debt) before giving it to a friend, who took over the payments for him. That friend made no payments on the loan after December 2012. (GE 7; Tr. 69.)

On March 4, 2013, Applicant prevailed in his worker's compensation claim. (AE E.) Retroactive payments were in installments and not in a lump sum. (Tr. 28-33.) On April 30, 2013, Applicant completed and certified to the accuracy of a Questionnaire for National Security Processing (SF 86) to renew his security clearance eligibility. In response to the financial record inquiries, Applicant indicated that he was seeking a modification of his home loan. Applicant also indicated that he was arranging repayment of \$1,608 owed on his motorcycle loan and \$3,600 owed on his car loan. (GE 1.)

A check of Applicant's credit on May 11, 2013, showed that Applicant was \$6,528 past due on his mortgage loan (SOR ¶ 1.a) as of March 2013, on which he was obligated to pay \$1,346 per month. (GE 5, Tr. 51.) His motorcycle loan (SOR ¶¶ 1.c and 1.k, same debt) had been charged off in December 2012 with a balance due on the loan of \$9,583. Applicant reportedly owed a deficiency balance of \$6,392 for the car surrendered in October 2012. The account opened for the dog was in collection with a balance of \$2,855 (SOR ¶¶ 1.b, 1.f, 1.g same debt). A wireless phone provider reported a \$658 outstanding collection balance from July 2010 (SOR ¶ 1.d). Three medical debts were in collection for \$430 (SOR ¶ 1.h), \$89 (SOR ¶ 1.i), and \$48 (SOR ¶ 1.j). Applicant was \$916 past due on the car loan obtained in November 2010. (GE 5.)

On May 22, 2013, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). Applicant volunteered that he had made no payments toward the debt for the dog because he felt "cheated" in the transaction. As for his delinquent motorcycle and car loans, Applicant explained that he had surrendered the motorcycle in a voluntary repossession in January 2013 and that he owed about \$1,608 after the motorcycle was sold at auction. Similarly, he had the car voluntarily repossessed and owed a deficiency balance of \$3,600 on the car loan. He indicated that he was making arrangements to pay off that debt. Applicant denied any other delinquencies. When confronted about a \$916 delinquency for his newer car loan, Applicant admitted that his loan for his current vehicle was past due, but he explained that he had already arranged to make the payment to bring his loan current. As for the wireless phone debt (SOR ¶ 1.d), Applicant explained that the \$685 were fees for cancelling his service, but he paid the debt in 2011. Applicant expressed his belief that the \$430 medical debt in collection (SOR ¶ 1.h) was from surgery for his work injury and should be covered by worker's compensation. He described his current financial situation as living from paycheck to paycheck, although he is able to meet his financial obligations. (GE 6.)

In June 2013, a \$3,742 judgment against Applicant was issued for the deficiency balance of the car loan obtained in 2007. Applicant had the payments for the judgment

voluntarily garnished from his pay, and the judgment was satisfied in April 2014. (GE 7; Tr. 46-48, 113.) In June 2013, the collection agency holding the delinquent debt in SOR ¶ 1.b (same debt in SOR ¶ 1.f) obtained a \$2,503 default judgment (SOR ¶ 1.g) against him. (GEs 3, 7; Tr. 75.)

Applicant unsuccessfully tried to modify his mortgage during the summer of 2013. (Tr. 37-39.) Around December 2013, Applicant listed his home for a short sale with a realtor.⁴ (AE I; Tr. 36.) Applicant accepted an offer for the home in February 2014, which was sent to his mortgage lender for review. The lender was legally required to offer him a loan modification before accepting the short sale. (AE I; Tr. 40.) Around May 2014, the lender approved him for a trial loan modification. Applicant made three payments, and in September 2014, he received the paperwork to finalize the modification. (AE C.) He submitted the notarized agreement with a payment to the lender, but was denied the loan in October 2014 because he had not submitted all the paperwork relating to the modification. (Tr. 41-43, 49.) Applicant was approved for a new loan modification trial program in March 2015, requiring him to make three payments of \$1,136.38 starting May 1, 2015. (AE A.) Applicant made the payments, and on October 1, 2015, his loan modification was approved. Just prior to the modification, his loan was \$33,811 past due. (GE 7.) Under his modified 30-year mortgage, Applicant's monthly payment is \$1,078.89. The interest rate on the new loan is a fixed 4%. (AE B; Tr. 50-51.)

In July 2014, a satellite television service provider placed a \$679 debt for collection. The debt was apparently for equipment that he did not return. Applicant wanted to reestablish service with the provider, so he paid the debt on September 28, 2014. (GEs 3, 7; Tr. 65-66.) Around January 2014, a credit card lender charged off a \$387 balance (SOR ¶ 1.e). Applicant had opened the account in April 2014 and started falling behind in July 2013. The wireless phone debt of \$685 (SOR ¶ 1.d) was still listed on his credit record as an outstanding delinquency. (GE 3.)

Applicant had intended to satisfy some of his debts with his income tax refund in 2014. The judgment creditor in SOR ¶ 1.g agreed to settle the debt for half of the balance, but he had an income tax liability from 2009 or 2010. He had taken two loans, of \$2,400 and \$6,600, from his 401(k) around 2008 for home improvements and then defaulted on the loans in 2011, when he was out of work because of his injury. (Tr. 106.) The IRS taxed them as premature disbursements. His federal income tax refund of \$6,700 for 2013 was intercepted in 2014 to satisfy his tax liability. (Tr. 61-62, 86-87, 106.) However, Applicant is ineligible to borrow from his 401(k) until he repays one of the loans. (Tr. 86-89.)

In April 2015, Applicant's credit card opened in April 2013 was placed for collection for \$387 (SOR ¶ 1.e). In June 2015, a utility provider placed a \$127 debt for collection (not alleged in SOR). (GE 7.) Applicant testified credibly that he paid the debt around in October

⁴ Applicant testified about his mortgage that he contacted a realtor in late 2012 and listed his home for a short sale. (Tr. 36.) Credit records show that his mortgage first became delinquent in September 2011 and that it was 90 days past due as of October 2012. (GE 3.) Realtor records show that he listed his property for sale in December 2013. (AE I.)

2015. (Tr. 66-67.) On October 16, 2015, Applicant paid \$1,078.89 toward his new mortgage. (AE K; Tr. 52, 57.)

Applicant was hospitalized unexpectedly for six days in October 2015. He had leave to cover his missed time but he incurred some medical costs not covered by insurance. (Tr. 99.) He did not elaborate about his medical expenses.

As of December 2015, Applicant had made no payments toward the judgment in SOR ¶ 1.g (same debt in SOR ¶¶ 1.b, 1.f), the \$387 credit-card collection debt (SOR ¶ 1.e), the \$2,298 charged-off balance for the motorcycle loan (SOR ¶¶ 1.c, 1.k same debt), or the \$685 wireless phone debt (SOR ¶ 1.d). (GE 7; Tr. 68, 70.) Applicant's car loan obtained in November 2010 had been charged off in March 2015 for \$6,431. He reportedly owed a \$2,306 balance on that debt as of August 2015. (GE 7.) Applicant expressed intent to resolve the judgment, the credit card debt, and the motorcycle loan balance with his income tax refund for tax year 2015, which he anticipated around February 2016. (Tr. 69-70.) Concerning the wireless phone debt on his credit record (SOR ¶ 1.d), he asserted that his only service with that provider was through his parents on an account not in his name. (Tr. 71.) About the medical debts in the SOR, Applicant was able to determine that the \$403 debt in SOR ¶ 1.h was incurred by him at a walk-in clinic. Applicant was not certain of the balance as of December 2015 since he had paid the clinic \$180 recently. Applicant had no knowledge of the \$89 medical debt in SOR ¶ 1.i. (Tr. 78.)

Applicant's fiancée works as a hairstylist and her income is inconsistent. (Tr. 62-63.) In February 2015, Applicant transferred to his current position for its stable work hours. Although overtime is unavailable to him in his current position, it is easier for him to budget for expenses when he has a set income each week. (Tr. 62-64.) At his hearing, Applicant testified that his monthly discretionary income varies, depending on his fiancée's earnings. He is paid weekly, and one paycheck goes directly to the mortgage. His second paycheck goes toward his fiancée's car loan, their car insurance, and 60-70% of their utility costs. The rest of his monthly pay goes toward food, gasoline, and other expenses. (Tr. 64-65.) After his hearing, he presented a monthly budget showing that monthly recurrent bills and food total approximately \$2,914 on income of \$3,600. Approximately \$686 of his monthly discretionary income goes toward household supplies. (AE J.) Applicant pays \$35 every other week for his daughter's horseback riding activities. (Tr. 108.) Applicant had sent his daughter to parochial school for preschool and kindergarten. However, she now attends public school. (Tr. 108-109.)

Character references

Applicant's neighbor attests to Applicant's dedication to his daughter. She considers Applicant to be "a very good person trying to get ahead in life for himself and his family." (AE D.) A supervisor at work, who became acquainted with Applicant when they attended trade school together some 14 years ago, worked with Applicant before Applicant's transfer to his current position. In this supervisor's experience, Applicant needed no direction when tasked with a job, and he was an excellent worker. (AE F.) Applicant's current co-workers believe him to be a good family man and worker. (AEs G, H.)

Policies

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

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

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

Analysis

Guideline F, Financial Considerations

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

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant took on a substantial amount of debt between February 2006 and November 2010. In addition to a \$148,824 mortgage loan (SOR ¶ 1.a), he financed the purchases of a 2002 model-year high performance car through a \$20,522 loan (not alleged in the SOR) and a new motorcycle through a \$14,638 loan (SOR ¶¶ 1.c and 1.k, same debt). He bought a dog on credit, charging \$2,230 to an account opened in January 2009 (SOR ¶¶ 1.b, 1.f, and 1.g, same debt). In November 2010, he obtained another auto loan of \$22,054 (not alleged in the SOR). Monthly payments on these five accounts totaled \$2,331. Applicant chose not to pay the \$80 scheduled monthly payment for the dog after learning that the animal was not a purebred. Without employment income following his on-the-job injury in February 2011, he loaned his used car and gave the motorcycle to friends who promised to make the loan payments. After his friends defaulted, he retook possession of both vehicles but then could not make the payments. The motorcycle loan was charged off for \$2,298. The loan for the used car and the charge account for the dog went to judgment for \$3,742 and \$2,503, respectively. He made some partial payments on his mortgage for a time, but his loan was past due \$33,811 as of July 2015. A debt of \$685 for wireless phone service (SOR ¶ 1.d) and three medical debts totaling \$567 (SOR ¶¶ 1.h-1.j) were placed for collection. A credit card debt of \$387 (SOR ¶ 1.e) was charged off in January 2014 because of nonpayment since July 2013. Before the SOR was issued, Applicant satisfied the judgment for the used car and paid a \$679 satellite television debt in collection. Neither of the debts was alleged in the SOR.⁵ They cannot provide a separate basis for disqualification, but they are relevant to assessing Applicant's financial judgment generally and his efforts in mitigation. Two disqualifying conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations," are clearly established.

Applicant's purchases of a motorcycle through a \$14,638 loan and of a dog on credit for \$2,230 suggest irresponsible spending under AG ¶ 19(b), which provides:

(b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to repay the debt or establish a realistic plan to pay the debt.

⁵ The DOHA Appeal Board has long held that the administrative judge may consider non-alleged conduct to assess an applicant's credibility; to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; to decide whether a particular provision of the Adjudicative Guidelines is applicable; or to provide evidence for a whole person analysis under Section 6.3 of the Directive. See, e.g., ISCR Case No. 03-20327 (App. Bd. Oct. 26, 2006); ISCR Case No. 09-07219 (App. Bd. Sep. 27, 2012).

Even so, Applicant initially intended to repay both debts. He or later a friend made payments on the motorcycle through December 2012. His credit record shows that his account opened for the dog was opened in January 2009 and was paid through October 2009. AG ¶ 19(b) is not fully established in this case.

In evaluating Applicant's financial record, mitigating condition AG ¶ 20(a), "the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment," applies only in that some of the debts are old. The medical debt in SOR ¶ 1.i is from 2008. The other medical debts are from 2010. Applicant defaulted on the debt for the dog in 2009 and on the motorcycle loan in 2012. The wireless phone debt in SOR ¶ 1.d is from 2010. However, other debts are more recent. Applicant began falling behind in his mortgage in September 2011. By October 2014, the loan servicer had reportedly initiated foreclosure because his loan was \$32,299 past due. His application for a loan modification was denied for missing paperwork. The credit card debt in SOR ¶ 1.e was charged off in 2014 for nonpayment since July 2013. In addition, Applicant's September 2015 credit report (GE 7) shows that he had been chronically late in his payments on the automobile loan opened in November 2010; that the loan first became delinquent in May 2014, and that a \$6,431 balance was charged off in 2015. As of August 2015, the reported balance was \$2,306 with a last payment in May 2015. Given the evidence of recent delinquency, AG ¶ 20(a) does not fully apply.

AG ¶ 20(b), "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances," is implicated in that Applicant's financial struggles largely began after he was injured at work in late February 2011. Applicant was assigned light duties for three or four weeks before being placed on unpaid leave until January 2012. He eventually prevailed in his worker's compensation claim in March 2013, but retroactive benefits were paid piecemeal. The injury was unforeseen, and the lack of income while appealing the denial of worker's compensation seriously compromised his finances to where he could not make timely payments on his credit obligations, including his mortgage. Sometime in the last five years, he incurred costs to replace his washer and dryer and some drywall after his basement flooded. He understandably gave priority to his mortgage once his financial situation improved, first by attempting a loan modification and then listing his property for a short sale. AG ¶ 20(b) does not explain the credit card delinquency in SOR ¶ 1.e or his failure to address the medical debts of only \$89 and \$48 (SOR ¶¶ 1.i and 1.j) when he was working full time and making no payments or only trial payments on his mortgage, especially after April 2014, when his wages were no longer being garnished to pay the \$3,742 judgment for the used car bought in June 2007.

Applicant is credited with rehabilitating his home loan. Applicant began working on a loan modification in 2012. Although he was denied, he was offered another opportunity after he presented his lender with a short sale offer. He made trial payments in the summer of 2014 only to be denied a loan modification for not returning the entire packet. He applied for a third time and made the required trial payments from May 2015 through July 2015,

before being approved in October 2015. AG ¶ 20(c), “the person has received counseling for the problem and/or there are clear indications that the problem is being resolved or is under control,” and AG ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” apply in mitigation of his mortgage delinquency (SOR ¶ 1.a). Applicant made the first payment under the modified mortgage (AE K), and with his record of trial payments, he has demonstrated that he can be counted on to make the payments required to keep his home. Applicant’s satisfaction of two debts not alleged in the SOR, the \$3,742 judgment and the \$679 satellite television debt, implicate AG ¶ 20(c) primarily. Debts paid after judgment or collection are not considered good-faith efforts to resolve debts as had Applicant contacted the creditors and arranged for repayment. Neither AG ¶ 20(c) nor AG ¶ 20(d) applies to the judgment debt for the dog (SOR ¶ 1.g, SOR ¶¶ 1.b and 1.f same debt), the motorcycle loan balance (SOR ¶¶ 1.c and 1.k same debt), the charged-off credit card balance (SOR ¶ 1.e), or the wireless phone debt (SOR ¶ 1.d). Applicant had not made any payments on these debts as of December 2015. Concerning the medical debts, Applicant testified that the medical debts in SOR 1.h and possibly 1.j are from a clinic where he was treated and that during a recent visit, he made a payment toward his outstanding balances. To the extent that AG ¶ 20(d) applies because of this payment, his medical debt is not fully satisfied.

Applicant is now contesting the validity of the wireless phone debt in SOR ¶ 1.d on the basis that he never had service with that provider in his own name. However, when he was interviewed by an OPM investigator in May 2013, Applicant discrepantly indicated that the debt was for cancellation fees that he believed he paid in 2011. The debt is still listed as in collection on his credit record as of September 2015. In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the DOHA Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government’s obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

The wireless phone provider has not updated the information on the account since January 2011, but Applicant did not present any documentation showing that the debt was being reported in his name in error or that it has been paid. He did not satisfy 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.

Applicant has not opened any new credit accounts since April 2013, when he obtained the credit card in SOR ¶ 1.e. It was the only account opened since the auto loan in November 2010 that was charged off in 2015 for \$6,431. Available credit information reflects a date of last payment on the auto loan in May 2015 and an outstanding balance of

\$2,306 as of August 2015, which could be a deficiency balance on the loan. Applicant provided no explanation for his failure to make timely payments. He listed a car payment of \$250 on his recent budget, which may well be for his fiancée's car, given that the monthly scheduled payment on the November 2010 car loan was \$372. Applicant has yet to make any payments on the \$2,503 judgment, the \$387 charged-off credit card, the \$685 wireless phone debt, or the \$2,298 sought by the motorcycle financier. With the \$2,306 past-due balance on the November 2010 auto loan, he owes approximately \$8,179 in delinquent balances plus some outstanding medical debt that is not mitigated under AG ¶ 20(c) or AG ¶ 20(d).

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).⁶ The analysis under Guideline F is 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 is a good worker whose finances were severely compromised by the lack of income for about ten months following an injury at work in late February 2011. After returning to work full time around January 2012, Applicant focused on trying to save or sell his home to address his sizeable mortgage delinquency. His recent default of his car loan suggests that his finances are more tenuous than his budget showing about \$500 in net monthly discretionary income would suggest.

Applicant's post-hearing submissions show that he made the first payment under his modified mortgage. He has yet to make any payments on the other consumer credit debts in the SOR, but he satisfied three unalleged debts: the judgment debt for the repossessed used car; a \$127 electric utility debt in collection, which he overlooked when he was on temporary duty for work; and a \$679 satellite television debt in collection. The DOHA Appeal Board has held that an applicant is not required to establish that he has paid off each debt in the SOR, or even that the first debts paid be those in the SOR. However, an applicant needs to show that he has a plan to resolve his debts and that he has taken significant steps to implement his plan. See ISCR 07-06482 (App. Bd. May 21, 2008). Applicant's plan to use his income tax refund for tax year 2015 to pay his delinquencies is reasonable, but promises to pay debts are not a substitute for a track record of timely payments. See ISCR Case No. 07-13041 at 4 (App. Bd. Sept. 19, 2008) (citing ISCR Case

⁶ 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.

No. 99-0012 at 3 (App. Bd. Dec. 1, 1999)). Applicant's disregard of a financial judgment is not condoned. He certainly would have a stronger case in mitigation had he been able to show a track record of efforts to address his non-mortgage debts. Nevertheless, Applicant is seen as not likely to engage in criminal activity to resolve his remaining past-due balances. With his mortgage issue resolved under terms acceptable to his mortgage servicer, he owes less than \$10,000 in delinquent debt. His debt burden is no longer so excessive to where it could not be resolved in the near future. He is not incurring any new debt that could further compromise his finances.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990). At the same time, a determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of the evidence to determine if a nexus exists between established facts and a legitimate security concern. Applicant acknowledged his poor judgment in his handling of the debt for the dog and understands that he is legally liable for the judgment debt. He understands that his security clearance and employment could be jeopardized should he neglect his financial obligations going forward. The Government can re-validate Applicant's financial status at any time through credit reports, investigation, or interrogatories. Approval of classified access to Applicant now would not bar the Government from revoking it, if required.⁷ After considering all the facts and circumstances, I find it is 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:	FOR APPLICANT
Subparagraphs 1.a-1.k:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Elizabeth M. Matchinski
Administrative Judge

⁷ The DOHA Appeal Board has held that the Government has the right to reconsider the security significance of past conduct or circumstance in light of more recent conduct that has negative security significance. See ISCR Case No. 10-96943 at 4 (App. Bd. Feb. 17, 2012.)