



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



In the matter of: )  
 )  
----- ) ISCR Case No. 09-04354  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Gina L. Marine, Esquire, Department Counsel  
For Applicant: *Pro se*

July 20, 2010

**Decision**

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant became unemployed in January 2005 when he and his fiancée had joint mortgage obligations on two homes totaling around \$3,500 per month. He defaulted on about \$4,500 in old student loan debt, and he and his fiancée borrowed about \$25,000 for a graduate program that he did not complete. Maintenance and repair costs for their homes and his fiancée’s vehicle led Applicant to incur about \$14,367 in delinquent credit card debt, despite his full-time employment. Applicant recently paid off his older student loan from 1999 and some of his delinquent credit card debt. Late payments on their mortgage for his fiancée’s residence led to problems with the lender that have yet to be resolved. In addition, they owe between \$7,000 and \$8,000 in past due real estate taxes for Applicant’s residence, and they have yet to make good faith efforts to resolve the outstanding student loan debt for the graduate program. It is too soon to conclude Applicant’s financial problems are behind him. Clearance is denied.

## Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on November 7, 2008. On September 23, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a statement of reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations, that provided the basis for its preliminary decision to deny him a security clearance and to refer the matter to an administrative judge. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense as of September 1, 2006.

On October 19, 2009, Applicant answered the SOR allegations, but he did not indicate whether he wanted a hearing. He filed a supplemental response on November 11, 2009, in which he requested a hearing. On November 25, 2009, the case was assigned to me to conduct a hearing and to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On December 15, 2009, I scheduled a hearing for January 13, 2010.

I convened the hearing as scheduled. Before the submission of any evidence, the Government moved to amend SOR 1.I to correctly identify the creditor. I granted the motion without objection. Five Government exhibits (Ex. 1-5) and ten Applicant exhibits (Ex. A-J) were admitted into evidence without objection. Applicant and his fiancée testified on his behalf, as reflected in a transcript (Tr.) received on January 22, 2010.

At Applicant's request, I held the record open until February 3, 2010, for Applicant to submit additional documentation. Applicant submitted five additional exhibits (Ex. K-O), which were admitted without objection.

## Findings of Fact

The SOR alleged under Guideline F, Financial Considerations, that as of September 2009, Applicant owed delinquent debt of \$4,152 on credit card balances totaling about \$16,799 (SOR 1.a, 1.b, 1.j, 1.I); was \$9,000 past due on a \$360,000 mortgage loan (SOR 1.c); owed a collection balance of \$424 to a telephone company (SOR 1.d); and owed delinquent student loan debt totaling \$42,070 (SOR 1.e-1.i, 1.k). Applicant denied that he was past due 120 days on the credit card debts in SOR 1.a and 1.b, or the mortgage loan in SOR 1.c. He disputed the charge-off balance claimed by the telephone company (SOR 1.d) because not all services were installed. Concerning the \$22,500 student loan debt in SOR 1.e, Applicant asserted that he should not be responsible for the entire balance because he was not given a fair opportunity to complete the program financed by the loan. He indicated that the \$9,970 in alleged student loan debt identified in SOR 1.f through 1.i was a duplicate of the \$9,600 student loan debt in SOR 1.k. As for SOR 1.k, he took out a hardship loan from his 401(k) account, but due to market losses, did not have the full \$8,600 needed to settle the student loan. He also contested the balances of the credit card debts

identified in SOR 1.j and 1.l. After considering the pleadings, exhibits, and transcript, I make the following factual findings.

Applicant is a 47-year-old power systems engineer employed by a defense contractor. (Ex. 1.) He earned his bachelor of science degree in marine engineering in July 1988, and then served in the U.S. military until 1996, when he was honorably discharged. (Ex. 1.) He has a long-term fiancée, who has grown children from a previous marriage. Her 29-year-old son was living with her as of January 2010. (Tr. 58.) Applicant never married, but he has a 17-year-old son. (Ex. 1, Tr. 123.) He supports his son by sending him \$150 to \$200 per week. (Tr. 124.)

Starting in February 1999, Applicant began living with his fiancée. (Ex. 1.) They maintained separate checking accounts, but shared responsibility for payment of household expenses. (Tr. 57.) Over the next five years, Applicant opened some credit card accounts, including the accounts identified in SOR 1.a and 1.b, for general purchases, repairs, appliance replacements, home improvement, and for a vacation that he took with his fiancée.<sup>1</sup> An individual revolving charge account with a home improvement retailer (SOR 1.l) was used to purchase a snow blower for his fiancée's house, a trailer, and a sump pump. (Ex. 5.)

Around 2004, Applicant and his fiancée decided to jointly purchase Applicant's parents' home as an investment property,<sup>2</sup> and to add Applicant's name to the deed on his fiancée's home. (Ex. 5, Tr. 43-44.) In April 2004, they took out a \$300,000 mortgage on her property, which was paid off in a refinancing of a new loan of \$360,000 in February 2005 (SOR 1.c). (Ex. 3.) The mortgage lender listed the loan solely in Applicant's name, even though they intended to be held jointly responsible. Applicant's fiancée paid the mortgage since it was her primary residence. (Ex. B, Tr. 46.) In September 2004, they bought his parents' home for \$270,000 by taking on a joint mortgage loan of \$170,000 on that property. (Tr. 116-17.) Applicant became primarily responsible for paying that mortgage. (Ex. 3, Tr. 56.)<sup>3</sup> He lived with his fiancée during the work week since her home was about 11 miles from his work. But he traveled every weekend to their other home, located over two-hours drive away, to check on the house and to see his son, who lived in the same area. (Tr. 125.) At the height of the gasoline prices, he was spending about \$800 per month on gasoline. (Tr. 124-25.)

Applicant worked as a contract safety and reliability engineer at the same plant for more than four years, until late December 2004, when he was laid off. Over his four

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<sup>1</sup>Applicant indicated that the credit card debts identified in SOR 1.a and 1.b were joint accounts opened with his fiancée in late 2000 or early 2001. (Ex. 5.) His November 2008 credit report (Ex. 3.) indicates the two accounts were individual revolving charge accounts opened respectively in September 2003 and November 2004.

<sup>2</sup>The house is 5,000 square feet, and there are two barns on the property. (Tr. 117.) Applicant testified that his fiancée wanted to establish a bed and breakfast with the property. (Tr. 122.)

<sup>3</sup>As of late 2009/early 2010, the monthly mortgage obligation on his fiancée's primary residence was \$2,426.84. (Ex. B.) The mortgage payment on his home was about \$1,200 a month. (Tr. 132.)

years, his salary had increased from \$50,000 to almost \$100,000 annually as of December 2004. (Tr. 114.) He was unemployed from January 2005 to July 2006, with the exception of some consulting work out of his home between November 2005 and April 2006. (Ex.1.) When he was unemployed from January 2005 until November 2005, he was paid about \$500 per week in unemployment compensation. (Tr. 111-12.) From May to July 2006, his unemployment benefit had increased to about \$600 per week. (Tr. 112.) Due to the lack of income he stopped paying on a student loan that he had taken out for \$15,260 (SOR 1.k<sup>4</sup>) for technical training between February 1999 and June 2000. (Ex. 1, 3, 5.) The loan balance was about \$4,500 when he ceased his payments around May 2005. (Ex. 5.) While he was unemployed, Applicant started a master's degree program at his undergraduate alma mater in September 2005. He and his fiancée jointly took out a \$25,000 student loan to cover the program's cost (SOR 1.e).<sup>5</sup> (Ex. 3, 5.) After three or four months, Applicant decided that the program was not a good fit for him, but he was persuaded by the Dean's office to continue his studies. (Ex. 5, Tr. 119-20.) In February 2006, Applicant stopped attending, but it was too late to receive a refund of his tuition. (Ex. 5.) Applicant knew when he left the program that it was too late for any refund. (Tr. 157.) He has not had any contact with the school since he left the program. (Tr. 161.)

In June 2006, Applicant opened a revolving charge account with the lender identified in SOR 1.j. The account had a credit limit of \$500, and he used it for general purchases and for automobile repairs. (Ex. 3, 5.)

From July 2006 to September 2008, Applicant worked as a staff engineer for the company that had contracted for his services earlier in the decade. (Ex. 1.) But the costs of maintaining two old homes, and unexpected home repair and vehicle costs, put a strain on their finances. In 2006, Applicant spent about \$3,500 after his fiancée's car rims were damaged due to road construction. (Tr. 180-81.) In 2007, Applicant and his fiancée had to pay \$7,000 out-of-pocket to replace the roof, and to repair walls, after her primary residence was damaged in a storm. In 2008, they spent \$3,000 to replace the furnace in her home. (Tr. 49.) On the property that served as Applicant's primary residence, they spent \$2,000 to \$3,000 to repair the house roof around 2006 and another \$4,000 for materials and \$1,000 to \$2,000 in labor costs to repair the barn roof the following year. (Tr. 50-52.) In September 2007, a \$292 balance on the credit card identified in SOR 1.j was placed for collection. (Ex. 3, 5.) As of January 2008, Applicant was delinquent on the credit card accounts identified in SOR 1.a and 1.b. (Ex. 4.) He made a few payments to the bank on those two charge accounts after the bank restructured his interest rates, but he ceased payment when the rates jumped to 28% and 34%. (Ex. 5.) When the credit card account identified in SOR 1.l went 180 days past due, the collection agent for that debt agreed to settle the \$5,500 balance for \$3,900. Applicant made three payments of about \$865 each in 2008, which he now

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<sup>4</sup>Evidence confirms that SOR 1.k represents an aggregate balance of the four student loans alleged in SOR 1.f through 1.i. (Ex. N.)

<sup>5</sup>Applicant testified that the \$25,000 originally owed on the loan was for the full program, which included the cost of staying onsite every other weekend over a 16-month period. (Tr. 192.)

contends was sufficient to settle the debt. (Ex. K.) As of November 2008, Experian (as to the original lender) and Equifax (as to the collection agency) reported the debt as settled for less than the full amount. (Ex. 3.) Applicant told the investigator in December 2008 that his payments fell short of the settlement balance. (Ex. 5.) Moreover, a collection agency reported a balance due of \$1,972 on the account as of July 2009. (Ex. 4.) He acknowledged as of January 2010 that the holder of the debt was contending that he still owed the funds. (Tr. 101.) He provided no documentation to resolve the discrepancy.

Starting in March 2008, Applicant made about six months of \$120 payments on the student loan debt in SOR 1.k. (Ex. 5.) Around 2008, a collection agent for the student loan debt in SOR 1.e threatened to place a lien on Applicant's properties if he did not begin repaying the debt. Applicant did not make any payments, but to date, no lien had been filed. (Tr. 165-66.) He was chronically late in paying the mortgage on his primary residence in 2008, and the loan was \$1,000 past due as of June 2009. (Ex. 4.)

In September 2008, Applicant left the job he had held for two years to work for his current employer at an annual salary of \$85,000. (Tr. 110.) His new job was located near his primary residence. (Ex. 1.)

On November 7, 2008, Applicant completed his e-QIP for a security clearance. He responded affirmatively to the financial delinquency inquiries, and disclosed the student loans identified in SOR 1.e and 1.k, and the past due credit card debts identified in SOR 1.a, 1.b, and 1.i. (Ex. 1.)

On December 30, 2008, Applicant was interviewed by an authorized investigator about his delinquent debts. He indicated that the collection agent for the \$28,262 student loan debt in SOR 1.e had threatened to place a lien on his two homes, and he expressed his intent to make payments if he could come to some resolution about a fair balance. As for his other student loan (SOR 1.k), his balance had accrued to about \$9,800 on the account. He was attempting to settle the \$8,900 in delinquent credit card balances identified in SOR 1.a and 1.b, and planned to satisfy the \$900 that he contended was owed on the account identified in SOR 1.i after he made three payments around \$88 each. He maintained that he owed no balance to the lender identified in SOR 1.j as the debt had been paid in early 2008. (Ex. 5.) Yet, on January 14, 2010, he paid \$117.52 to satisfy the debt in SOR 1.j. (Ex. M.)

On February 1, 2009, Applicant paid \$4,000 on the student loan debt in SOR 1.k. (Ex. J.) He was supposed to pay the lender an additional \$3,800 to settle the debt, but "things didn't happen." (Tr. 144.)

Starting in March 2009, Applicant and his fiancée began having issues with the mortgage lender on her primary residence, after a late payment on March 5, 2009, intended for their mortgage payment for February 2009, was applied by the mortgagee

to the escrow.<sup>6</sup> (Ex. B, Tr. 64.) Applicant's fiancée made the loan payment for March 2009 on time,<sup>7</sup> but the lender reported the account as past due one payment of \$2,406.16, and late charges of \$54.07. On April 22, 2009, the mortgagee issued a notice of default to Applicant, requesting payment of \$4,776.47 (payments for March and April plus late fees). On April 30, 2009, Applicant's fiancée sent a late payment of \$2,460 to the mortgagee for April 2009, which was returned to Applicant on May 15, 2009, as it was deemed insufficient to cure the default. The mortgagee again demanded the March 2009 payment, for a total of \$7,051.89 to cure the default. On May 30, 2009, Applicant's fiancée sent a payment of \$5,000, which was returned. The lender claimed that \$9,368.13 was due to cure the default. On July 1, 2009, Applicant's fiancée paid \$8,000 on the mortgage. In August 2009, she paid another \$3,500. As of August 26, 2009, the mortgage statements reflected no balance due other than the current monthly payment plus some late fees and charges (\$2,494.16 total). The evidence does not include the mortgage statements for the period ending September 26, 2009, and October 26, 2009. Payment information shows that a check to the mortgagee for \$2,494.16, dated September 11, 2009, presumably for September, cleared Applicant's fiancée's checking account on September 16, 2009, but it is unclear whether it was ever credited by the mortgage lender. A \$2,500 check issued October 25, 2009, presumably a late payment for October, was credited to her account on November 4, 2009. On November 15, 2009, Applicant's fiancée issued another check for \$2,500, which was applied to their mortgage loan on November 24, 2009. The mortgagee continued to report the account as one payment past due for November. Inexplicably, on November 25, 2009, the lender sent a letter to Applicant indicating that it had received a payment of \$1,908.93, which was short of their monthly loan payment. On December 16, 2009, the lender issued a notice of intent to foreclose on the mortgage, reportedly for failure to make the mortgage payment due November 1, 2009. Applicant's fiancée has been frustrated in her efforts to resolve the issue, because of the mortgagee's failure or inability to respond to her concerns. (Ex. B, Tr. 66.) Applicant and his fiancée have looked into refinancing the mortgage (Ex. K, Tr. 138-40.), but he has been unable to obtain a suitable loan due to his poor credit. (Tr. 140.)

In June 2009, Applicant was offered settlements of \$2,300 for the \$6,262.47 balance of SOR 1.a and \$2,600 for the \$7,394.99 balance of SOR 1.b. Applicant was required under the settlements to make four installment payments on each account between May 31, 2009 and August 29, 2009. (Ex. F, G.) Applicant settled the debt in SOR 1.a. (Ex. K., Tr. 102-03.) However, when he failed to make the last installment payment on the debt in SOR 1.b, the settlement as to that debt was nullified. (Tr. 175.)

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<sup>6</sup>Applicant's fiancée testified that there was an escrow shortage, but rather than contact her and ask for a separate payment or notify her of an increase in the amount of the monthly payment, the lender allocated the entire amount to the escrow with no prior notification. Applicant's fiancée acknowledged that she has been late at times in making the mortgage payment. (Tr. 68-69.)

<sup>7</sup>According to the mortgage statements in Exhibit B, the monthly mortgage payment of \$2,406.16 was due March 1, 2009, but was late if payment was received after March 16, 2009. The monthly mortgage statement for the period ending March 16, 2009, shows payments of \$2,460.23 on March 5, 2009 (which was applied to escrow), and of \$2,406.16 on March 16, 2009.

Following a \$400 payment in December 2009 on the debt in SOR 1.b, Applicant owed \$6,092.13. (Ex. H.)

As of July 2009, a telephone provider had placed a \$424 balance for collection (SOR 1.d) due since October 2008. (Ex. 4.) Applicant had contracted with the telephone company for the installation of telephone, Internet, and satellite services for his primary residence. Since only the telephone line was installed, he disputed the debt balance with the company without success. (Ex. K, Tr. 98-100.) On October 13, 2009, the assignee collecting the \$424 balance for the telephone company (SOR 1.d) offered to settle for \$297.16. In January 2010, Applicant countered with an offer to pay \$96 (\$9.60 per month for the telephone that was connected for ten months). (Ex. O). As of February 2010, the creditor had not accepted his counteroffer. (Ex. K.)

On October 12, 2009, Applicant was informed that the creditor identified in SOR 1.k intended to collect his defaulted student loan balance of \$6,193.46 by intercepting his state income tax refund for 2010. (Tr. 147.) On January 14, 2010, in response to Applicant's request for a final payoff figure for the student loan debt in SOR 1.k, the collection agency notified him on January 12, 2010, that his account would be closed and paid in full on receipt of \$5,867.23 by January 29, 2010. (Ex. E.) On January 20, 2010, Applicant paid \$5,501.62, which was accepted in full satisfaction of the student loan debt in SOR 1.k (duplicated in SOR 1.f. -1.i.). (Ex. N.)

Applicant was chronically (12 times) 30 days late in repaying a vehicle loan of \$13,202 that he had taken out in April 2004. (Ex. 3, 4.) He paid off his truck in 2009 after making "aggressive payments" that year with the intent of selling the vehicle for the funds to pay off other debts. (Tr. 178.) Applicant had not sold the truck by January 2010 because of about \$6,000 in repairs needed because of a fuel injector problem. Applicant acknowledged that the vehicle is not likely to be sold in the near future because he is "locked in kind of a battle" with the vehicle manufacturer over the repair issue. (Tr. 180.)

Applicant did not pay the mortgage on his primary residence for November or December 2009. (Tr. 117, 136.). With the upkeep of the property becoming "just too much," Applicant and his fiancée decided to sell it. (Tr. 117-18.) In preparation for listing the property, Applicant had an estate sale in December 2009. He sold some vehicles and equipment, which netted him \$8,471. (Ex. I, Tr. 126, 129.) Applicant gave \$1,500 of the proceeds to his fiancée to put toward their delinquent debts, including the debt in SOR 1.b. (Tr. 130.) As of January 2010, he had \$2,500 of the sales proceeds and he intended to sell other items for the funds to address his remaining debt. (Tr. 151.)

As of late January 2010, Applicant owed between \$7,000 and \$8,000 in delinquent real estate taxes from 2005 to 2007 on his primary residence (Tr. 133.). He brought the mortgage on the property current with a payment of \$4,170 on January 29, 2010. (Ex. L.) He borrowed \$4,200 from his 401(k) to get caught up on his mortgage. Applicant had withdrawn funds from his 401(k) twice before, including in 2009 for \$2,600 (Ex. E, Tr. 152-53.) Applicant owes \$6,092.13 on the credit card debt in SOR 1.b, and he has requested a payoff balance from the creditor. (Ex. H, K.) He and his fiancée have not resolved the status of the loan on her primary residence, although the

loan on their other home is up-to-date as of February 2010. (Ex. K, L.) Applicant has not resolved his disputes as to the balances of the telephone company debt in SOR 1.d, or his student loan for the graduate program in SOR 1.e. He is willing to pay for the phone line since it was installed, but not for Internet and satellite since they were not installed. (Tr. 99, 170-72.) Contending the school had not been receptive to his request for a structured leave of absence to deal with his new job and relocation, he disagrees that he should have to pay the entire cost of the program. (Ex. K, Tr. 81.) He has not had any contact with the student loan lender in some time because he assumes the lender wants a lump sum payment that he cannot afford. (Tr. 163.)

In addition to the \$2,500 from the estate sale on deposit in a checking account, Applicant had \$500 in a savings account as of his hearing. (Tr. 154.) He also had about \$1,300 cash on hand. (Tr. 155.) He closed the credit card accounts in SOR 1.a and 1.b, and has opened no new credit card accounts. (Ex. 4.)

Applicant's fiancée is employed full time in the health care field at an annual salary of about \$72,000. She started with her employer ten years ago at an annual wage of \$35,000. In 2006, she earned about \$45,000. In 2008, she was given a 30% increase in her pay. (Tr. 60-61.) She rents out an apartment on the first floor of her residence, which brings an additional \$800 in income per month. The present tenants have resided there for the past five years and pay their rent on time. (Tr. 62.) Applicant's fiancée has taken joint responsibility for Applicant's debt in the SOR, and she intends to resolve them in partnership with him. (Tr. 77.) As of January 2010, she and Applicant did not have a joint bank account. She had \$3,000 on deposit in the checking account from which she pays the mortgage on her primary residence. She had \$318 in a savings account and \$200 on deposit in another checking account. (Tr. 76.)

Applicant is supported in his efforts to obtain a security clearance by a former supervisor and personal acquaintance (Ex. C), and by a former coworker (Ex. D), from Applicant's previous employment in safety and reliability engineering. Applicant's former supervisor is aware that Applicant has had "various financial challenges over the years." In his experience, Applicant's "integrity has held firm with respect to professional intellectual property and other areas of confidential information." He believes that with proper financial consultation, Applicant's financial issues will be resolved. (Ex. C.)

## **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 (AG). 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 overarching 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture. 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 as to obtaining 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 as to 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 finances is set out 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 began to fall behind in some financial obligations during a period of unemployment in 2005. In May 2005, he stopped paying on the student loan taken out

for technical training in 1999 (SOR 1.k, duplicated in SOR 1.f-1.i). With about \$4,500 in student loan debt in default, Applicant and his fiancée took on a new student loan of around \$25,000 (SOR 1.e) for Applicant to attend a graduate program. After he dropped out in February 2006, he made no effort to repay that student loan, which due to interest had risen to \$28,262. By late 2007, he was delinquent on three credit card accounts (SOR 1.a, 1.b, 1.l), on which he owed an aggregate balance around \$14,367. While the mortgage on his primary residence is now current, he has been chronically late in making his mortgage payment, including as recently as November and December 2009. Furthermore, although also not alleged, Applicant acknowledged that they owe between \$7,000 and \$8,000 in delinquent real estate taxes on his primary residence. As for his fiancée's primary residence, the evidence establishes they have been late several times in paying that mortgage (SOR 1.c), although never to the extent of the \$9,000 alleged. In October 2008, he contracted with the telephone company to install a landline, Internet, and satellite television connections in his primary residence, and incurred \$424 in charges (SOR 1.d) which he refused to pay because only the phone was connected. Disqualifying conditions AG ¶ 19(c), "a history of not meeting financial obligations," and AG ¶ 19(a), "inability or unwillingness to satisfy debts," apply.

Potentially 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," is not pertinent. Although Applicant has resolved some of the debts in the SOR, as discussed in reference to AG ¶ 20(d) below, he has taken no steps to resolve the \$28,262 student loan debt in SOR 1.e. Their recent history of late mortgage payments and unaddressed delinquent real estate taxes also precludes me from mitigating the financial concerns under AG ¶ 20(a).

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," applies in part. Applicant collected unemployment at \$500 per week between January and November 2005, and \$600 per week between May and July 2006, but his compensation was well short of his previous income of \$100,000 annually. His fiancée earned about \$45,000 a year, when their monthly mortgage payments totaled about \$3,600. Applicant had ongoing support obligations for his son, presumably at \$150 to \$200 per week as well. In addition to the unforeseen precipitous loss of his income, Applicant and his fiancée incurred \$10,500 in out-of-pocket repair costs for her residence and her car in 2006/07. But AG ¶ 20(b) does not mitigate the poor financial judgment that Applicant continues to display by failing to pay his mortgages on time, and by continuing to disregard the delinquent student loan debt in SOR 1.e and the past due real estate taxes owed on his primary residence.

Applicant's recent settlements of the debts in SOR 1.a, 1.j, and 1.k (duplicated in SOR 1.f-1.i) implicate AG ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Applicant has also made some payments on the credit card debt in SOR 1.b, thereby reducing the balance to \$6,092.13 as of

January 2010. That said, clearly it would have been in his best interest to have settled the debt in August 2009, and his failure to make the last payment of \$1,197, which nullified the settlement agreement, reflects ongoing financial problems. As for the credit card debt in SOR 1.i, the evidence suggests that Applicant made some payments on the debt under a settlement agreement. The evidence is conflicting whether Applicant paid enough to settle the debt. But AG ¶ 20(d) clearly does not apply to the unresolved student loan debt in SOR 1.e.

Applicant and his fiancée adequately documented payments showing that the mortgage loan identified in SOR 1.c should not have been reported as \$9,000 past due. The lender applied the payment for February 2009 to an apparent shortfall in escrow without giving Applicant an opportunity to make a payment. It resulted in the lender holding Applicant in default for February 2009, and returning subsequent payments. After Applicant's fiancée paid \$11,500 to the mortgagee in the summer of 2009, the monthly payments were considered up-to-date as of August 26, 2009. A \$2,494.16 payment to the mortgagee on September 11, 2009, does not appear to have been credited to the account. A \$2,500 check issued October 25, 2009, presumably for October, was credited to the mortgage on November 4, 2009. Applicant's fiancée made another \$2,500 payment on November 15, 2009, which was credited on November 24, 2009. Yet, the lender inexplicably indicated it received a payment of only \$1,908.93. On December 16, 2009, the lender issued a notice of intent to foreclose on the property, claiming it had not received the payment for November 2009. AG ¶ 20(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," applies with regard to the loan balance, but Applicant and his fiancée bear some responsibility for their mortgage problems because of their history of late payments.

Moreover, their record of recent late payments on both mortgages shows ongoing financial mismanagement. As of his hearing, Applicant had primary responsibility for making the mortgage payments on the house they bought from his parents, and he was two months behind. He paid \$4,170 on January 29, 2010, to bring the loan current, but he had to borrow funds from his 401(k) to do so. His fiancée was late several times in the payments on the mortgage loan in SOR 1.c, which is in Applicant's name, despite receiving \$800 per month in rent from their tenants. Neither Applicant nor his fiancée made any payments on the \$7,000 to \$8,000 in delinquent real estate taxes owed on the property in which Applicant primarily resides. In addition, Applicant has done little to legally discharge himself of liability for repaying all or part of the student loan debt in SOR 1.e. There is no evidence that Applicant has had any financial counseling, which his former supervisor believes could be of benefit to Applicant. On the facts presented, I am unable to apply 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."

## 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 the conduct and all the relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(a).<sup>8</sup> Applicant continues to owe a substantial amount of delinquent debt, most notably the \$28,262 in defaulted student loan debt identified in SOR 1.e and the \$6,092 in past due credit card debt in SOR 1.b. The telephone company is holding him liable for a \$424 debt from October 2008. It is unclear whether he owes a balance on the account identified in SOR 1.i. The DOHA Appeal Board addressed a key element in the whole-person analysis in financial cases stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." 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 his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ('Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.') There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted). While Applicant need not have satisfied or settled all of his debts to obtain a security clearance, there must be adequate assurances that his debts are likely to be resolved in the near future, and that his financial problems are not likely to persist.

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<sup>8</sup>The factors under AG ¶ 2(a) are:

(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.

Assuming the telephone company accepts his counteroffer, and that he continues to make payments on the credit card debt in SOR 1.b, he has no established plan to address the student loan debt in SOR 1.e. He has had four years to challenge his legal liability for the full cost of the graduate program with the educational institution, and he has not done so. Furthermore, he has yet to demonstrate a track record of responsibility with regard to handling his financial matters generally, as evidenced by his record of late vehicle and mortgage loan payments, and unpaid delinquent real estate taxes. Despite a recent estate sale that netted him \$8,241, he had to borrow \$4,200 from his 401(k) account to bring his mortgage current as of January 2010, and to settle the student loan debt in SOR 1.k. While he plans to sell his truck for additional funds, the vehicle needs costly repairs, which he contends the manufacturer should cover, so the sale is not likely to be soon. From roof and furnace replacements, to maintenance and repair costs for the two houses and vehicles, something has always prevented Applicant from repaying his debts and reestablishing good credit. Based on the evidence before me, I am unable to conclude that it is clearly consistent with the national interest to grant Applicant a security clearance 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:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant <sup>9</sup>
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	For Applicant

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<sup>9</sup>The allegation is found in Applicant's favor because it was not established that the mortgage was delinquent to the extent alleged. However, evidence of recent late payments on the account, as well as of the mortgage on their other home, bears negative implications for Applicant's handling of his finances overall.

## **Conclusion**

In light of the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Elizabeth M. Matchinski  
Administrative Judge